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Post-colonialism, indigenous power and resource management:

Does s33 of the Resource Management Act 1991 have its intended effect for iwi authorities?

A Dissertation

submitted in partial fulfilment

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by

Alison Sarah Outram

Lincoln University

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Abstract of a Dissertation submitted in partial fulfilment of the requirements for the Degree of Master of Planning.

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In many countries, the empowerment of indigenous people has been a dominant theme in post-colonial planning discourse. As a means of empowering indigenous people in New Zealand there are numerous legislative provisions provided through the Resource Management Act 1991 (RMA). One such provision is through the ability of local authorities to transfer functions, powers or duties to public authorities (including iwi authorities) under s33 of the RMA.

The last comprehensive study of s33 RMA transfers was completed in 2000, and this study found that there had been no transfers made to iwi authorities. One of the reasons provided for this was that iwi were focused on settling Treaty claims, of which there have been many settlements since 2000. A number of other barriers were also suggested as reasons for the lack of transfers to iwi authorities, including a lack of formal process for local and iwi authorities to follow, a lack of capacity for iwi authorities to undertake transferred functions and a lack of clarity as to what defines an iwi authority.

This research project comprises a stock take of the situation in 2017 and investigates whether there has been any progress in transferring powers to iwi authorities, and the reasons behind this. In particular, this study tests the 2000 finding that the lack of Treaty settlements remains a factor in the lack of transfers to iwi authorities.

Keywords: Post-colonialism, iwi, s33, section 33, RMA, power, power sharing arrangements, transfer, Treaty settlements, empowering indigenous people, iwi authorities.

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Chapter 1

Introduction

1.1 Introduction

The Resource Management Act 1991 (RMA) provides a number of provisions to allow for the involvement of Māori in resource management and planning. One of these provisons is s33, which gives a local authority the ability to transfer functions, powers and duties to public authorities. A number of public authority bodies are listed in the text relating to s33, and amongst these iwi authorities have been specifically mentioned. However, as noted by a number of authors, the ability to transfer functions has not been used to empower iwi authorities in the past (Dalziel, Matunga, & Saunders, 2006; McCrossin, 2013; Ministry for the Environment, 2015; Rennie & Thomson, 2007; Thomson, Rennie, & Tutua-Nathan, 2000).

1.2 Research Approach and Objectives

The primary objective of this research is to determine the reasons why, despite being in the RMA since its inception in 1991, s33 has not been used to a greater extent to empower iwi authorities. This primary objective takes the form of the research question:

'Whether or not there has been any progress in powers being transferred to iwi authorities through section 33 RMA, and if not, why not?'

The reason for this research question is that the ability for councils to be able to transfer responsibilities to public authorities was clearly thought to be important in 1991; however judging by the small number of transfers that have been made since then, it is apparent that there is something lacking in the implementation of this ability. My research has examined the reasons for this and assessed whether or not there has been a change in the number of transfers since the most recent study of s33 transfers by the Ministry for the Environment in 2015.

In particular, my research has focused on the reasons why there are no documented transfers of functions from a local authority to an iwi or public authority through s33. The data gathered for this dissertation has been compared to the data from the study by Thomson et al. (2000) as well as the 2015 Ministry for the Environment study.

In order to address this focus, secondary research questions will examine aspects such as:

- Are other methods used to share functions, powers or duties with public or iwi authorities?

- What are the reasons given by councils for not transferring responsibilities under s33 and are these reasons the same as those found in the study by Thomson et al. (2000)?
- If Treaty settlements since 2000 have increased the number of s33 transfers to iwi?
- Is there potential for s33 transfers to iwi authorities in the future?

1.3 Dissertation Structure

The stucture of the dissertation proceeds as follows:

Chapter Two provides an overview of international literature in order to establish what methods (if any) are being used to redress harm caused by colonisation to indigenous people. This chapter also discusses the role that power can play in planning and how this can affect the ability of indigenous people to manage resources.

Chapter Three provides the New Zealand context for the injustice and subsequent redress to indigenous people. A summary of previous New Zealand studies is also included to determine the past involvement of Māori in resource management under the RMA.

Chapter Four discusses the methodology used in this research and the reasoning for the approach that was used. As well as analysis of secondary sources that provided historical data, primary research through surveying local authorities was undertaken to determine the state of s33 transfers in 2017.

Chapter Five presents the results from the surveys of local authorities and runanga. The number of s33 transfers in existence in 2017 are compared to the results of studies completed in the past; and other resource management agreements between local authorities and iwi are identified.

Chapter Six discusses the results and analyses them in terms of differences over time in the number of s33 transfers, the reasons for the lack of s33 transfers, methods outside of s33 that are used to create resource management agreements and the likelihood of s33 transfers in the future. The relationship between these results and the findings of the literature review are also discussed.

Chapter Seven concludes the dissertation with a summary of the findings from this research, discusses any limitations and provides recommendations for future research of resource management agreements between local authorities and iwi.

Chapter 2

Literature Review

2.1 Introduction

In many countries around the world, indigenous people have had their rights to self goverance affected by colonisation. In an attempt to redress the harm caused by this, a variety of methods have been employed by government authorities in order to restore justice. However, these attempts at redress are more often found on paper than put into practice, as appears to be the case in New Zealand. Theories of power and the understanding that these may provide on the devolution of power are discussed below.

2.2 Theories of Power

The nature of power is a substantial matter in itself, but for the purposes of this dissertation I have adopted the definition used by Howitt (2001), who describes the nature of power as allowing those who are empowered to impose decisions on those who do not have as much power. Howitt notes that this type of approach is problematic, particularly in regards to the ability of indigenous people to manage land and resources as they had done prior to colonisation.

There have been numerous attempts to understand the power relationships between groups of people, and as a result two main schools of thought have developed; the Habermasian approach (Habermas, 1985) and the Foucauldian approach (Foucault, 2012). Each having implications for the groups who are involved in the power relationship.

The Habermasian approach is described by Flyvbjerg and Richardson (2002) as power relationships being part of a utopian world where each participant is equal and that there are no distorting effects caused by power in decision making processes. This theory is considered by the authors as being 'weak' as it lacks the ability to allow for understanding of what occurs in the real world and does not provide a basis for action or change. As a result of this weakness, the authors argue that the Habermas approach is problematic for planning as the focus is on what is intentended rather than on what is implemented, resulting in no improvement in existing processes and an imbalance of power.

As discussed by Flyvbjerg and Richardson (2002), the Habermasian approach does acknowledge that there are barriers to discursive decison making where all participants have equal say; however Habermas does not discuss how power creates these barriers or how they may be overcome. Issues relating to cultural differences and power are also not discussed by Habermas, despite being an important issue for decision makers to consider.

In constrast to the Habermasian view of power and planning theory is the theory developed by Foucault. Rather than ignoring the existence of power in planning, the Foucauldian approach is to acknowledge the existence of power in planning as something that is unavoidable, but has advantages as well as disadvantages.

Rather than attempting to remove the influence of power on the decision making process, Foucault accepts power as unavoidable and recognises that it has potential to be used in a positive or negative manner. By taking this approach, Foucault acknowledges different interest groups and the power that lies with each of those groups (Flyvbjerg & Richardson, 2002; Howitt, 2001). As well as recognising the power held by people in authority, the Foucauldian approach also includes the assumptions that people have about the appropriate manner to think or act, which gives even greater power to institutionalised practices (Healey, 2003).

In taking the Foucauldian approach to planning theory, planners and decision makers are able to better understand what occurs in practice, rather than relying on the ideal situation envisaged by Habermas. By acknowledging the role of power in planning, planners are able to be more aware of existing power relationships and how this can affect future planning decisions. Howitt (2001) notes that this is of particular importance as there may otherwise be the risk that economic interests resulting from resource management will take priority over the rights of indigenous people.

In a further attempt to find a suitable solution to the existence of power relationships, Hillier (2003) notes that the best course of action is to acknowlege the benefits and shortcomings of both approaches described above, and make decisions based on the existence of both theories. In particular, Hillier notes that the idealist world described by Habermas is unlikely to be achieved in reality as it is based on the assumption that all individuals share the same rationality in decision making and this is unlikely to be true as governments and indigenous people often have differing priorities and values. Hillier refers to Lacanian theory as the basis for decision making, whereby each player is part of a struggle which finally determines the course of action to proceed with.

Hillier suggests a combined approach of Habermasian and Foucauldian theories in an attempt to remove the negative effects of power in planning. However, Flyvbjerg and Richardson (2002) note that Hillier is not clear in describing how this will be achieved. Despite this, there has been a shift towards the role of power in decision making being acknowledged and as a result, the ability of indigenous people to have a voice in resource management decisions may be increasing.

2.3 Addressing Power in Planning

Mokaraka-Harris, Thompson-Fawcett, and Ergler (2016) write that in the past 25 years there has been a definitive shift towards the recognition of power relationships between government

authorities and indigenous people and how this has affected indigenous people and the presence of their values in resource management. However, the authors note that power hierarchies still exist and can cause issues amongst and between indigenous people and local authorities.

As a means to overcome the barriers created through power, Mokaraka-Harris et al. (2016) note that there should be a focus on engaging with indigenous people throughout the resource management decision making process, as local people can provide specific knowledge about their local area. The authors write that the key to this engagement is that the participation of indigenous people in decision making processes must be meaningful and allow the participants to be empowered.

The empowerment of people through participation in planning and decision making has been discussed by Arnstein (1969), who has ranked participation levels in a ladder type arrangement, where the higher up the ladder you are, the more meaningful your participation (Figure 1).

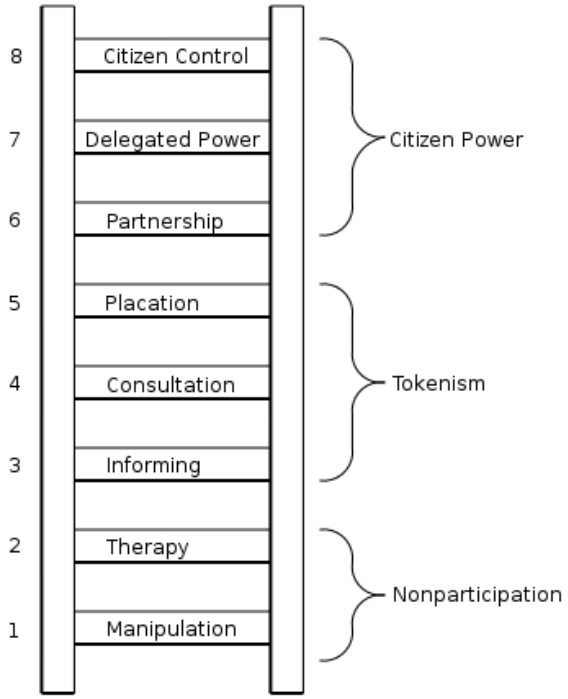

Figure 1 Eight rungs on the ladder of citizen participation. Source: Arnstein (1969)

Arnstein (1969) describes 'citizen participation' as being 'citizen power', whereby power is distributed according to your position on the ladder of citizen participation. On this scale, the greatest level of citizen power is when decision making is given over to citizen control, allowing citizens to make the final decision on a matter. However, Collins and Ison (2009) discuss an alternative to this view, stating that no single group (citizens or government) has complete understanding of an issue and by using Arnstein's ladder of citizen participation, successful outcomes

may be limited. Rather than simply focusing on power, different groups should learn from the knowledge and experience of each other and work together to make decisions. In this manner, the specific interests of different groups may be allowed for and result in better outcomes (Collins & Ison, 2009; Tritter & McCallum, 2005).

The importance of taking this approach towards planning and decision making, particularly in areas where colonialism has taken place is discussed by Matunga (2013), as this will allow for the dual nature of indigenous and Western planning practices to be taken into consideration. It is also noted that these planning approaches are linked by history and that it is essential to provide for this relationship to ensure future planning practices are successful and allow redress to take place (Matunga, 2013).

A number of other authors have written about the need to empower indigenous people in planning processes and the disempowerment that Western planning practice has had on the ability of indigenous people to manage land and resources. For instance, Porter (2010) writes that unless the differences between indigenous and Western planning practices are recognised, there is a danger that indigenous values will continue to be dominated by colonial practices, resulting in further injustice towards indigenous people.

Porter (2010) notes that there have been new approaches to allow for the involvement of indigenous people in planning, including joint-management/co-management agreements. Rather than a top-down approach, these agreements allow indigenous people to partner with government in order to co-manage land or resources. This type of approach allows for collaboration between the involved parties, and empowers indigenous people in the decision making process. Co-management is described by Berkes (2009) as being an agreement where power and responsibility is shared between government and other parties, typically where the knowledge from the non-government party of certain locations is used together with resources from the government to achieve outcomes.

While this can empower indigenous groups to the extent that their local knowledge is recognised by government, Porter (2010) notes that care should be taken with this approach to ensure that indigenous people are not simply considered to be a stakeholder who can provide useful information. If this occurs, the indigenous people are still powerless and the result may be that their historical relationships with land and resources are not taken into consideration. Additionally Porter writes that such agreements are typically framed by colonial legislation, potentially constraining the power of indigenous people to have an equal voice in planning decisions.

In contrast to joint-management/co-management agreements, there are co-governance agreements. Ackerman (2004) describes this type of agreement as ‘inviting social actors to participate in the core

activities of the state' (pp.447). By taking this approach, co-governance arrangements create a relationship where government and other groups work together towards desired outcomes and no top-down participatory mechanisms are involved. This ensures equal participation of government and non-government parties, and allows for greater accountability of the government to society. The author does note that these arrangements are not without bias, and care should still be taken to ensure each party is equally involved.

While there is ongoing discussion in international literature about the best approach to empower indigenous people, it is clear that the role of power in decision making is important, as is the need to consider the involvement and empowerment of indigenous people in planning and resource management. Despite the short comings noted by Porter (2010) and Ackerman (2004) relating to joint-management/co-management and co-governance approaches, these approaches have been used in New Zealand in an attempt to empower Māori in planning and resource decisions. These attempts are discussed further in the following chapter.

Chapter 3

New Zealand Context

3.1 Introduction

As in other colonised countries, New Zealand has a history of injustice towards indigenous people (Balint, Evans, & McMillan, 2014). Much of the injustice towards Māori can be traced back to when the Treaty of Waitangi/Te Tiriti o Waitangi was signed. This founding document was signed as an agreement between the British Crown and the Māori people and was intended by the Crown to be an agreement of British rule over Māori. However, there are two versions of the Treaty; one in English and one in Māori, and the differences between these versions have caused some tension between Māori and non-Māori (Berke, Ericksen, Crawford, & Dixon, 2002; McCrossin, 2013).

When the two versions of the Treaty are compared, it can be seen that the English version reduces the sovereignty of Māori to rule over their traditional lands by granting the Crown the ability to govern and make laws over Māori people, however the Māori version grants the Crown governorship, but still allows Māori leaders to maintain sovereignty over their lands. In addition, the English version assumes that Māori are governed by a single entity (a Western colonial view of sovereignty), when in reality there are numerous iwi, each with their own land and traditions which must be considered (Berke et al., 2002; McCrossin, 2013).

These differences between the versions of the Treaty of Waitangi are important, as when considering the regulatory planning of land and resources in New Zealand there is a need to recognise the historical spatial boundaries, responsibilities and authority of different iwi and hapu groups. Traditionally there was no central planning system, rather indigenous planning was based on the relationships that people had with specific places and resources (Matunga, 2013). This is in stark contrast to modern planning practices where central authorities implement planning practices that cover much larger areas.

The differences in land and resource management have been recognised to some extent and there have been attempts to redress some of the injustices caused by the Treaty of Waitangi. This redress is primarily actioned through Waitangi Tribunal processes and by increasing the recognition of Māori rights through a period of Resource Management Law Reform (RMLR) in the 1980's and 1990's which culminated in the creation of the Resource Management Act 1991 (RMA). This Act created the requirement for local governments to empower Māori in resource management planning and decision making (Berke et al., 2002).

The following sections will discuss the RMLR period and the resultant provisions in the RMA that enable power sharing arrangements and how these affect the ability of Māori to participate in resource management. The key findings from previous s33 transfer studies are also discussed.

3.1.1 Resource Management Law Reform

From the signing of the Treaty until relatively recently, Māori have had limited influence in resource management decisions. However, in the 1970's there was a shift towards the recognition of the Treaty of Waitangi and the rights of Māori, and in 1975 the Waitangi Tribunal was established in order to address grievances between Māori and the Crown (Berke et al., 2002).

However, it was not until 1985 that the Waitangi Tribunal was given the jurisdiction to consider how Crown actions that were contrary to the Treaty of Waitangi caused historical grievances towards Māori. This led to hundreds of claims being filed by Māori in relation to loss of land as well as the loss of the ability to control and own natural resources (Bennion, 2004; Wheen & Ruru, 2004).

Despite the jurisdiction given to the Waitangi Tribunal in 1985, and subsequent claims and cases that highlighted the need to consider Māori cultural values in local government, very little was actually required of local government in terms of recognising the importance of Māori in resource management. To address this issue, there was a period of resource management law reform that saw the production of the Resource Management Act 1991, that amongst other things, could be used to empower Māori in planning and resource management (Berke et al., 2002; Dalziel et al., 2006).

3.1.2 Resource Management Act 1991

As discussed by Berke et al. (2002), the enactment of the RMA in 1991 was a significant mechanism towards acknowledging the importance of Māori values and rights. The authors discuss three substantive provisions in the purpose and principles section of the RMA that require Māori rights to be addressed when local authorities create plans, including:

1) Section 6(e) states that as a matter of national importance, plans 'shall recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga'.

2) Section 7(a) requires plans to 'have particular regard to' kaitiakitanga, which describes the guardianship role of Māori over land and resources. The RMA does not specifically mention Māori in this provision, but defines kaitiakitanga as 'the exercise of guardianship by the tangata whenua' and defines tangata whenua as 'the iwi, or hapu, that holds mana whenua over that area'. The meaning of mana whenua is customary authority, therefore s7(a) gives authority to iwi or hapu to exercise kaitiakitanga in order to achieve the purpose of the RMA.

3) Section 8 states that in order to achieve the purpose of the RMA, persons involved in resource management 'shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi)'.

Although these provisions provide guidance to local authorities on the importance of Māori rights and values, there is some criticism that they are open to interpretation and do not provide a clear process for local authorities to follow (Berke et al., 2002).

However, case law has provided some guidance in terms of the interpretation of these provisions. The cases of *Te Awatapu O Taumarere v Northland Regional Council 1998* and *Ngati Hokopu Ki Hokowhitu v Whakatane District Council 2002* have shown that when considering section 6(e), the strength of the relationship between Māori and the environment determines the extent to which the relationship should be considered. The *Te Awatapu O Taumarere v Northland Regional Council 1998* case is an example of a strong relationship between Nga Puhi and their kaitiaki status with the Taumarere River. As a result of this relationship, the proposed regional policy statement was amended so that s6(e) and s7(a) of the RMA can be provided for.

The *Takamore Trustees vs Kapiti Coast District Council 2003* case provides guidance on the interpretation of s7(a). The judgement text notes that undertaking consultation is a part of having 'particular regard' to kaitiakitanga, however consultation without allowing the views of Māori to influence decision making is a token gesture at best, and is less than what is lawfully required.

A publication by Chapman Tripp (2005) decribes the Treaty principles of s8 RMAas still developing as more cases are taken to court and rulings made. Berke et al. (2002) appear to make the correct observation in relation to this provision as being open to interpretation and having an unclear process for local authorities to follow. However, also of note, is that the decision of the *Takamore Trustees vs Kapiti Coast District Council 2003* included a clause that said an entity may have already met their obligations under s8 by properly incorporating s6(e) and s7(a) elements in their proposed activity.

In addition to these provisions of the RMA, there are approximately 40 other provisions that reference Māori in relation to planning and resource management. The majority of these do not grant Māori a great deal of power and rely on mechanisms such as consultation, consideration and notification in order to seek Māori opinions on proposals. There are other provisions, such as the ability to form a joint management agreement, co-management agreement or agreement to delegate power, however with each of these arrangements, power remains with the local authority rather than the other party. There is only one exception to this, which is s33.

Section 33 of the Resource Management Act 1991 (RMA) gives a local authority the right to transfer one or more of its functions, powers or duties under the RMA to another public authority:

> *"33 Transfer of powers*
>
> *(1) A local authority may transfer any 1 or more of its functions, powers, or duties under this Act, except this power of transfer, to another public authority in accordance with this section.*
>
> *(2) For the purposes of this section, public authority includes—*
>
> *(a) a local authority; and*
>
> *(b) an iwi authority;..."*

One of the arguments for using s33 transfers, is that it can be used as a mechanism to empower local communities and Māori people (Rennie, Thomson, & Tutua-Nathan, 2000). Rennie et al. (2000) argue that through empowering these people or groups to make decisions about resource management, local knowledge will be used to inform the decision making process and the community will be more likely to manage the resource sustainably as it will be to their direct benefit to do so. The authors write that this form of community-based management is more likely to achieve sustainable management as any resources will be managed for long term, rather than short term gain.

Rennie et al. (2000) note that there are arguments against this type of power sharing as there may be difficulties in identifying the community of interest, there may be power inequalities within the community, the level of management may not match the scale of the resource, fragmentation of larger resource management programmes and conflicts of interest from within the community group.

Despite these arguments against community-based management of resources, s33 along with other provisions provide a means for this type of management to be implemented. In arguing the importance of s33 transfers, Rennie et al. (2000) discuss that it is difficult to comprehend how local authorities can adequately provide for Māori culture and traditions if local government is 'dominated by non-Māori or people without an understanding of the cultural context and language of Māori' (pp. 7). Thus a community-based management system that transfers power to the community is logical, as it will enable local authorities to better carry out their duties as per s6(e), 7(a) and 8 of the RMA.

However, the Ministry for the Environment (2015) recently took a different viewpoint of s33 transfers by stating that s33 was intended to be a useful tool that would assist local authorities with managing overlapping functions or cross boundary issues by enabling the rearrangement of responsibilities to correspond with common interests and to make efficient use of expertise when developing plans or considering consents.

This viewpoint appears somewhat narrow as s33 specifically mentions the ability to transfer functions, powers or duties 'to another public authority' which includes other local authorities, iwi authorities or other groups; and viewing s33 simply as a useful tool to manage overlapping functions or cross boundary issues appears to remove some of the intention of s33, which is to enable local authorities to transfer power to organisations outside of the local government sector.

Other statutes in the RMA, namely section 34 and section 36B-E, also offer local authorities the means to shift roles from themselves to other authorities, however in the case of section 34 this is merely delegating the role to another authority, while sections 36B-E give a local authority the means to enact a joint management agreement with a public authority. With these mechanisms, power is still ultimately held by the local authority. It is only through a section 33 transfer that power is shifted from a local authority to a public authority or iwi.

3.2 Past Section 33 RMA Studies and Results

As previous studies by McCrossin (2013), Rennie and Thomson (2007), Thomson et al. (2000) and Rennie et al. (2000) have indicated, there have been no transfers made to iwi authorities in order to empower Māori in resource management since the enactment of the RMA in 1991. The most recent study by the Ministry for the Environment in 2015 indicates that this trend has continued. However, each of the studies has shown that there have been transfers from local authorities to other local authorities, usually to address efficiency in how matters are dealt with, and usually in the form of a function being transferred from a regional authority to a district authority (McCrossin, 2013; Ministry for the Environment, 2015; Thomson et al., 2000). These findings provide evidence to show that although s33 is not currently being used to transfer power to iwi authorities from local authorities; the local authorities are aware of the existence and usefulness of s33.

Previous studies of s33 have indicated that there are a number of reasons why there has been a lack of transfers from local authorities to iwi authorities (Rennie et al., 2000). These have been grouped into three main categories by Thomson et al. (2000), and include:

1) A lack of formal process where neither the local authority or iwi authority know what process should be followed in order to enact a section 33 transfer. The study by Thomson et al. (2000) notes that as there is no prescribed format, each local authority decides what it will accept as an application by an iwi authority.

2) A lack of clarity on what exactly defines an iwi authority, and how to determine which iwi authority represents a particular area. Local authorities indicated that they were hesistant in granting section 33 transfers due to this, as they did not wish to cause offence to any other iwi authority who may also represent an area (Thomson et al., 2000).

3) The third main reason given by local authorities for the lack of transfers to iwi in the study by Thomson et al. (2000), was that of resourcing and capability. Local authorities questioned whether iwi authorities had the resources available to them for managing any functions that were transferred to them, however local authorities may transfer financial resources as part of the transfer of functions. As discussed by Rennie et al. (2000), during a period of Treaty settlements there may be difficulties for iwi to allocate staffing resources towards requesting a s33 transfer, as resources may be focussed on dealing with Treaty settlements. A number of recent Treaty settlements have been made since their research, and as a result there may be subsequent s33 requests by iwi as resources became free to deal with other issues. Alternatively, the settlements may have resulted in a reduced demand for s33 transfers if satisfactory power sharing agreements have been reached.

3.3 Other power sharing agreements

In addition to s33 transfers, local authorities have a range of other methods that may be used to share power, responsibilities and duties or involve Māori in resource management decisions. These methods are outlined below with examples.

3.3.1 Delegation

As previously noted, a delegation of power through s34 RMA is allowed to be made to a committee or community board that has been established in accordance with the Local Government Act 2002. The local authority that delegated the function, power or duty may give notice to revoke the delegation at any time; and may also apply terms and conditions to the delegation as it sees fit. As well as these conditions, the local authority may not delegate the approval of a plan or any change to a plan, but may delegate much of the work leading up to the approval of a plan.

An example of this are the zone committees that were established under the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010 (the ECan Act), which gave the zone committees the ability to prepare Zone Implementation Programmes that included much preparatory work for RMA plans (Rennie, 2015).

Section 34A of the RMA allows for the delegation of powers and functions to employees and other persons. Similar to s34, s34A excludes the ability of a local authority to delegate the ability to approve a proposed policy, plan or the power of delegation.

3.3.2 Joint Management Agreement

A joint management agreement through s36B-E RMA may be made between a local authority and another party including public authorities, iwi authorities or groups that represent a hapu; provided

that the party represents the relevant community and has the ability to carry out the function, duty or power in a joint manner with the local authority.

A joint management agreement may be revoked by the local authority or other party, provided 20 days' notice is given. As per the RMA, any decision made through a joint management agreement has the same legal effect as if the decision had been made by the local authority itself.

The Rotorua Lakes Council has a joint management agreement in place with the Te Arawa River Iwi Trust that covers consultation and the appointment of Commissioners (Te Arawa River Iwi Trust, 2015).

3.3.3 Co-management Agreement

For the purpose of this research, co-management agreements include relationship agreements and Memorandums of Understanding. Co-management agreements have been described by Dodson (2014) as 'the collaborative process of decision-making and problem solving'(pp. 525). Dodson further describes co-management as the devolution of decision making power to a collaborative body comprised of a local authority and local community/stakeholder interests, however the ultimate decision making power remains with the local authority. McCrossin (2013) also notes that co-management agreements typically outline the relationship between the local authority and other party, rather than allowing for the transfer or delegation of responsibilities relating to resource management and decision making.

An example of a co-management agreement is the Te Waihora Joint Management Plan developed between the Department of Conservation and Ngai Tahu. The plan contains strategies for the integrated management of the Te Waihora/Lake Ellesmere area and its resources through co-operative management between the Department of Conservation and local runanga (Te Rünanga o Ngäi Tahu & Department of Conservation, 2005).

3.3.4 Co-governance Agreement

Dodson (2014) describes co-governance agreements as 'arrangements in which ultimate decision-making authority resides with a collaborative body exercising devolved power – where power and responsibility are shared between government and local stakeholders' (pp. 525). This is in contrast to co-management agreements where ultimate decision making power remains with the local authority.

An example of this type of a co-governance agreement is that which has been made between Nga Papatipu Runanga and Environment Canterbury in relation to the environmental management of the Canterbury Region (Environment Canterbury, 2012).

A report by the Office of the Auditor-General (2016) notes that the terms 'co-management agreement' and 'co-governance agreement' are often used interchangeably as their definitions are misunderstood or merged into a single meaning. The report simplifies the definitions of these terms as 'governance focuses on strategic matters, while management is concerned with day-to-day operational responsibilities' (pp. 8).

3.3.5 Consultation

A large number of provisions have been made in the RMA to encourage the consultation of Māori in accordance with resource management decisions. These provisions to consult Māori relate to the need to consult the relevant iwi authorities when preparing a national policy statement, regional policy statement or regional or district plan; as well as for resource consents where Māori interests may be affected by the proposed activity.

Through case law, a number of principles for consultation have been developed. These are contained within the Local Government Act 2002 (LGA) and are referred to in Schedule 1 of the RMA as the process which should be followed when policy statements or plans are being prepared (Ministry for the Environment, n.d.).

An example of consultation being implemented is through the work undertaken by the Ministry for the Environment in relation to freshwater. The consultation was intended to provide an opportunity for feedback from Māori on issues present in managing water resources and potential actions to allow for better management in the future (Ministry for the Environment, 2005).

3.3.6 Iwi Management Plans

Iwi Management Plans (IMPs) are planning documents that are lodged with the relevant local authority, recognised by an iwi authority and relevant to the resource management issues of a particular region or district. They must be taken into account by the local authority when preparing or changing regional policy statements, regional plans and district plans (Ministry for the Environment, 2016). The Ministry for the Environment notes that IMPs are used by iwi to express kaitiakitanga and may include details relating to environmental, cultural, economic and spiritual values; areas of cultural significance; and outline how iwi desire to participate and be involved in resource management.

One example of an IMP is the Mahaanui Iwi Management Plan 2013. This IMP is an expression of the guardianship and right to exercise authority over natural resources in the Canterbury region by iwi. Through the IMP guidance is provided to local authorities on how to protect Ngai Tahu values and

provide for their relationship with the natural resources of the region (Mahaanui Kurataiao Ltd, 2013).

3.3.7 Other Legislative Provisions

In addition to the aforementioned power sharing agreements, ad hoc legislative provisions have been used in New Zealand. These include the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010 (ECan Act), Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 and the Hauraki Gulf Marine Park Act 2000.

The ECan Act was used to remove democratically elected councillors on the Canterbury Regional Council, removed the ability of the community to appeal plans and granted unchecked power to the Minister for the Environment (Brower, 2010).

The Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 and the Hauraki Gulf Marine Park Act 2000 were also used to share power; however they placed power in the hands of the community rather than strictly with government authorities.

3.4 Conclusion

Through the existence of the Waitangi Tribunal, the Treaty settlement process and the enactment of the RMA, it can be seen that there have been steps taken towards acknowledging Māori values and the rights that Māori have to participate in resource management decisions. However, as previous studies have indicated, there has been little progress for Māori in terms of actually being able to make decisions as no power has been transferred to them which would allow them to do this. My study will attempt to determine if this is still the case in 2017, or if there has been some progress for iwi.

Chapter 4

Methodology

4.1 Research Methods

A national survey of local authorities using the Local Government Official Information and Meetings Act 1987 (LGOIMA) to request information was chosen as the most appropriate method to establish the extent of the existence of s33 transfers in 2017. This method of primary data collection was used by Rennie et al. (2000) and used in my study as one of the critiques resulting from the study by Rennie et al. (2000) was that the 2015 Ministry for the Environment (MfE) study for recording s33 transfers resulted in an incomplete coverage. The MfE process may have improved since that study, however for the purpose of this research, data was collected directly from local authorities. As part of this research, data from previous studies, including the MfE study, has been compared to check for accuracy of each study.

Once the method of primary data collection was established, a list of the regional and territorial authorities within New Zealand was compiled using the information available through the Local Government New Zealand website (Local Government New Zealand, 2017). The general contact details for each council were used as many councils did not list specific contact people. As they were responding in an offical capacity to an official request, no ethical issues arose; however to enable future follow-up research to be conducted more easily the names of the specific people who replied to the request for information are provided at the end of this report (Appendix A).

Each council was contacted and asked about their involvement in s33 transfers or other resource management agreements. This contact took place via email or online enquiry form in the first instance. The standard request that was sent by email to each local authority is available at the end of this report (Appendix B).

If, after a period of two weeks, no response had been received, the information was requested again with a reference to the Local Government Official Information and Meetings Act 1987 (LGOIMA). The information was requested through LGOIMA as a means to compel local authorities to respond to the survey, as noted in the studies by Rennie et al. (2000) and Thomson et al. (2000). If councils had not responded to this request after the 20 working day period allowed by LGOIMA, a reminder email was sent and if no response was received after a further 20 day period, a follow up telephone call was made.

Due to the number of locations that local authorities are found in, and time constraints for this research, the information relating to s33 transfers was requested by email. The advantage of this is that there is a digital record of any requests and subsequent responses, however email requests may also be ignored by the recipient or may not produce as detailed responses as an in person interview or examination of files.

In addition to this primary data collection, a comparison of data from the DSL Environmental Handbook (Rennie & Thomson, 2007) and the stock take completed by the Ministry for the Environment (2015) was undertaken to enable a comparison of the numbers and types of transfers sought/obtained over the period between 1991 and 2015. The Ministry for the Environment was contacted to establish whether or not it had been notified of any transfers completed, or initiated but not completed, through s33 between 2015 and 2017.

An online computer search was made of Iwi Management Plans (IMPs) held by regional authorities to see if the terms '*section 33', 's33', 's.33'* or*'transfer'* are mentioned in the plans. Only the plans that were available electronically from the websites of regional councils were studied as part of this research. This information was not examined by previous studies but was undertaken as a means to enable insights and follow up opportunities with Māori and their potential involvement in s33 transfers.

Examining these IMPs also allowed the degree to which Māori are aware of and actively considering s33 and related empowerment issues to be ascertained. When these terms were found in the plans, the appropriate runanga was contacted and asked if there had been any progress in attaining a section 33 transfer, to share their experience with trying to have a transfer of responsibilities made to them through section 33 and if there were any other agreements in place instead of section 33 transfers. These questions were asked to assist in determining whether the runanga had made any progress in achieving empowerment through s33 transfers or other methods, and to establish if there were any barriers to empowerment. The survey questions asked of runanga are available at the end of this report (Appendix B).

A similar search was made of the Westlaw database and New Zealand Law Reports to find cases where the key terms 'section 33', 's.33' or 's33'were mentioned. The reason for examining these databases was to see if any case law provided guidance on the types of functions, powers or duties that may be transferred from a local authority to a public authority. From this search three cases relating to s33 applications and interpretations were found. These are listed at the end of this report (Appendix C).

In order to assess the impact that Treaty settlements may have had on s33 transfers, a search was made of Waitangi Tribunal reports and Treaty settlements that have been made since 2000 to establish whether any contain references to s33 and how such statements relate to proposals for s33 transfers in iwi management plans. The Office of Treaty Settlements was contacted to obtain a complete and up-to-date list of settlements as of June 2017 (see Appendix D). The settlement documentation was found on the Office of Treaty Settlements website and each document was searched electronically using the key words: 'resource management agreements', 'co-management agreements', 'joint-committees' or 'consultation'. Key words that were searched for in Treaty settlement documents were '33', 'co-management', 'joint' and 'consultation'.

In areas where there have been recent Treaty settlements or Iwi Management Plans that indicate a desire for s33 transfers, key iwi stakeholders were surveyed via email to see if there had been any attempts to establish s33 transfers, if there were any reasons why attempts had not been made and what their experience had been if there had been attempts for s33 transfers (see example in Appendix B).

However, not all iwi stakeholders were able to be contacted, thus some of their experiences of attempting to obtain a s33 transfer are not included in this report. A list of those iwi contacted appears in Appendix A.

All s33 transfers were included in this research to determine whether or not transfers were being made to any local authorities or public authorities. This would indicate if a lack of transfers to iwi authorities was unique to those authorities or if there was a lack of transfers in general. This is in contrast to the research by McCrossin (2013), who asked local authorities about s33 transfers made to iwi authorities rather than transfers made to other local or public authorities.

4.2 Data Analysis

The data gathered from this research has been analysed in the following manner in order to address the research objectives:

1) Comparison of s33 transfers between 2007 (Rennie & Thomson, 2007), 2015 (Ministry for the Environment, 2015) and 2017 (primary data gathered for this research). The comparison includes the total numbers of transfers as well as numbers of transfers to iwi authorities.Data from McCrossin (2013) was excluded in the comparison, as the report only discussed s33 transfers to iwi, of which there had been none.

2) Summary and analysis of comments made by local authorities regarding s33 transfers to iwi in order to establish the reasons for the lack of transfers. The analysis took the form of

reflective reading and coding by themes, some of which had been identified by previous research by Rennie et al. (2000) and others emerging from the data.

3) Summary of methods outside of s33 that are reported by respondent local authorities to create resource management agreements with public authorities.

4) Summary of Treaty settlements and information received from iwi stakeholders on the possibility of future s33 transfers.

This summary and analysis of data will enable research questions to be addressed through comparing present numbers of s33 transfers to those that have occurred in the past as well as identify whether the same barriers to s33 transfers are still present. Other methods of power sharing will also be able to be identified, as will the possibility of future s33 transfers from an iwi perspective.

There are potential constraints in this research, for instance unlike Rennie and Thomson (2007) I did not have time to pursue recalcitrant local authorities or iwi for responses. However, despite these constraints on the method, as is discussed in Chapter 7, I am confident that my data is generally sound. Although it was not possible to obtain responses from all local authorities during the time frame of this research, a reasonable period of time (11th April 2017 - 28th July 2017) was provided for responses.

Chapter 5

Results

This study achieved a 97.4% response rate from the local authorities (i.e. 76 of 78 councils responded); however some survey questions were not answered by councils and the responses to other questions varied greatly in detail. Most local authorities responded promptly to the email survey, with a few indicating that they would be interested in receiving the final report as they may be able to take some lessons from this to assist in involving iwi in planning decisions in the future. Of the councils who did respond, 50 replied within the time frame provided by LGOIMA. Of those who responded outside the time frame, only a single council sent an email providing notification that they required an extension of time in order to process the request.

A reminder email sent to the remaining councils, achieved a further 14 responses within 14 days of that request, however the remaining 12 councils took between 42 and 92 days to respond (Figure 2). The average length of time for a district or city council to respond was 19 days, while the regional councils took an average of 29 days to respond. However, there was great variability in these response times, as all regional councils had responded within 77 days. Of the city and district councils who did respond, the longest time to obtain a reply was 92 days.

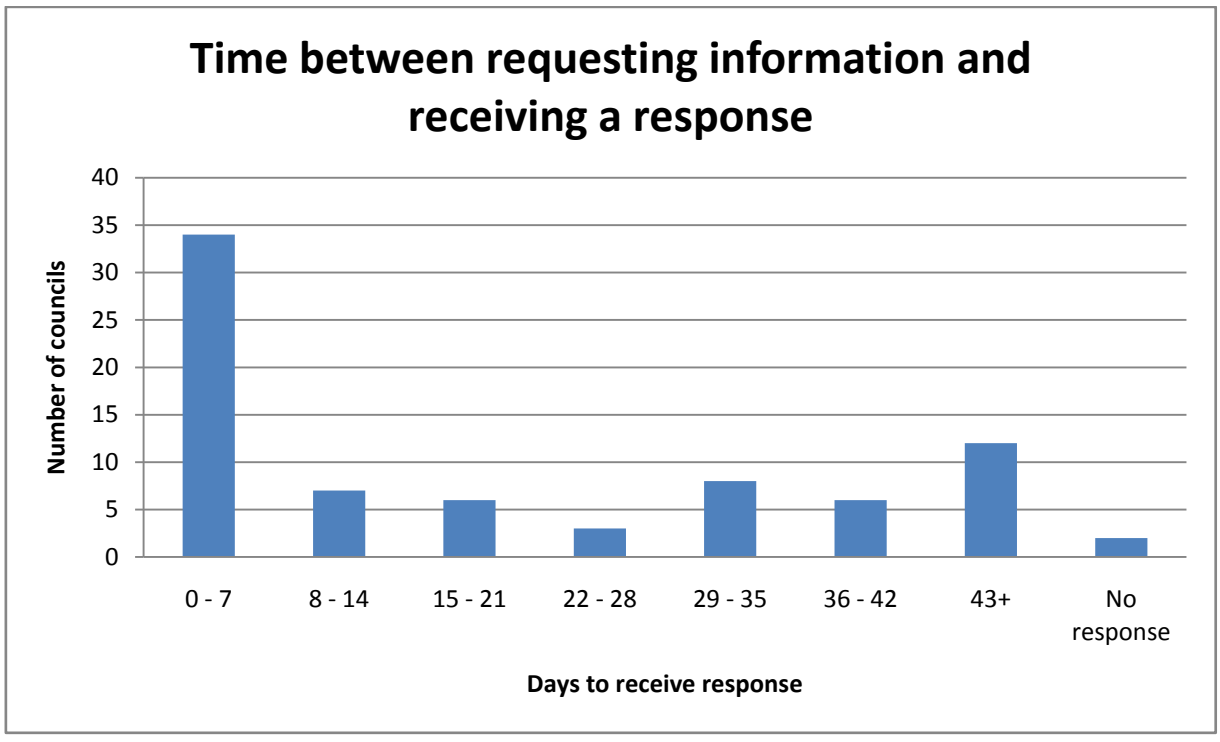

Figure 2 Time (in working days) between requesting information and receiving a response

In relation to the varying level of detail in responses, one possible reason is that in the email survey, the term 'transfer' was used when inquiring about other methods used by local authorities to shift power when the correct term should have been 'share' (as there are no other methods of transfer). This may have resulted in some local authorities providing information relating exclusively to s33 transfers rather than commenting on more general arrangements for the sharing of power. Another possible explanation may be that local authorities were simply too busy to reply to the survey in any great detail.

Of the 79 local authorities surveyed for this research, 63 indicated that they did not have a s33 transfer in place whereby they transferred functions to other authorities; and 49 indicated that they did not use any other methods to share functions with other authorities. It should be noted that these are not mutually exclusive and local authorities who did have s33 transfers in place did not necessarily employ other methods of sharing functions, duties or powers.

Of the local authorities who responded, each council provided or attempted to provide an answer to whether or not they had any s33 transfers in place. Questions relating to other methods used to share power or if the council had been approached by iwi for a s33 transfer did not have a 100% response rate. Four local authorities did not indicate in either a positive or negative manner as to whether they had other methods in place to share power, while seven did not provide any type of response in regards to approaches by iwi. One could speculate as to the reasons for this, for example if raised in an informal setting but not received positively it might not be recorded as an approach by councils, whereas iwi may see it has having been raised and been given the message not to waste resources on something that the council is unlikely to support. Alternatively, they may simply not have had anything to say on the matter one way or another.

It was also found that five of the councils had been approached by iwi in either a formal or informal manner for a s33 transfer. Four of the five councils that were approached were city or district councils, while one regional council was approached. The Tauranga City Council was the only local authority to report a formal approach by iwi for a s33 transfer.

5.1 Comparison of s33 transfers between 2007 and 2017

Between 2007 and 2017, it can be seen that there has been a decrease in the number of councils participating in transferring or receiving functions through s33 transfers as well as a decrease in the overall number of transfers, from 33 to 17 (Figure 3). It should be noted that the comparison of s33 transfers between 2007, 2015 and 2017 show the total number of transfers reported to exist at that particular time period. It is not a cumulative graph.

There appears to have been an increase in transfers since the 2015 Ministry for the Environment stock take and the data gathered for this study in 2017. However, these figures may not represent an actual increase in the number of s33 transfers as the reason for the apparent increase may simply be the under reporting of s33 transfers in the 2015 MfE stock take.

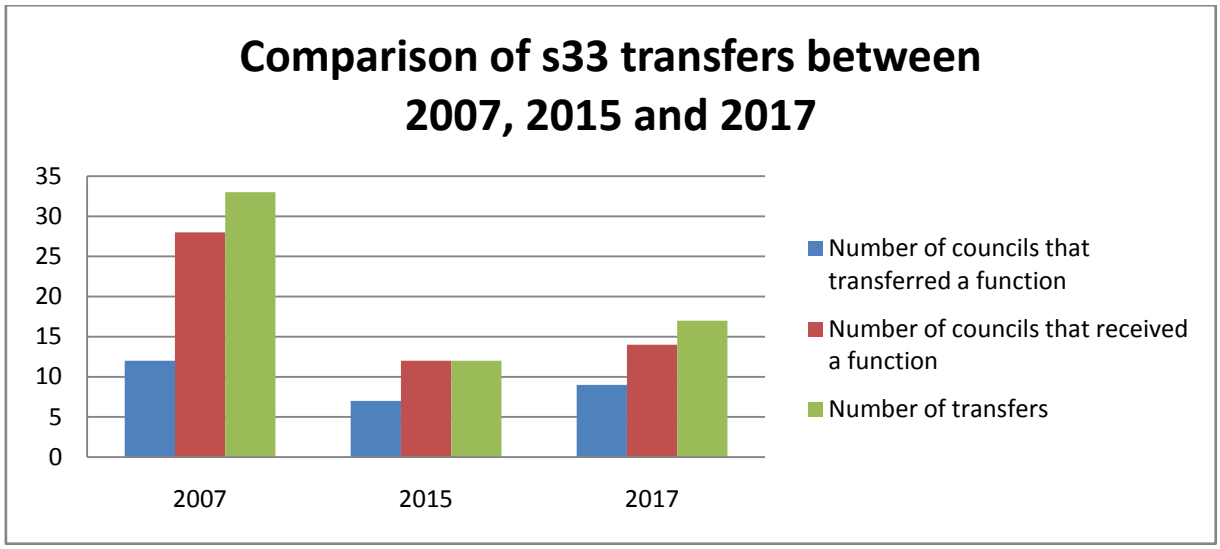

Figure 3 Section 33 transfers between 2007 and 2017[1].

The study by Rennie and Thomson (2007) identified that in 2000, there were nine regional councils who had transferred functions to district or city councils, and two district councils who had transferred functions to their respective regional councils. Although this only equates to 11 councils transferring functions, 28 councils received functions. This was due to regional councils transferring functions such as the management of the discharge of contaminants into air to each district or city council in the region.

The later study completed by the Ministry for the Environment (2015) was completed after the amalgamation of the Auckland Regional Council and various district and city councils of the region. After the amalgamation and formation of the unitary council, the s33 transfers between the regional and district/city councils ceased to exist, therefore they are not included in the data for 2015. After removing the Auckland data, there are four regional councils who transferred functions to district and city councils, and three district councils who transferred functions to their respective regional councils. These transfers equated to 12 councils receiving a s33 transfer, and a total of 12 s33 transfers being in existence, a large but logical decrease from the numbers reported by Rennie and Thomson (2007). A comparison of the data which excludes s33 transfers made by amalgamated councils in the Auckland region is presented later in this section.

[1]Source: Data for 2000: Rennie and Thomson (2007), data for 2015: Ministry for the Environment (2015), data for 2017: Primary research.

In the case of the Auckland Council, which became a unitary authority in 2010 as the result of the amalgamation of the Auckland Regional Council and several territorial authorities, many of the s33 transfers became obsolete when the amalgamation process was completed. The Auckland Council team leader who responded to the email survey indicated that there was limited information available about the s33 transfers as the staff who had been involved had retired or left the Auckland Council, and that there was very little documented information about the transfers in files or legal documents.

In order to provide a more accurate representation of s33 transfers through the period between 2007 and 2017, a second graph was created that excludes the transfers made by the Auckland Council pre-amalgamation (Figure 4). Although the Auckland data is excluded, the same trend of a decrease of transfers can be seen. It should be noted that in 2006 the Banks Peninsula District Council was abolished and the area became part of the Christchurch City Council's jurisdiction (Local Government Commission, 2005). This abolishment has no effect on the figure below as there are no records of s33 transfers being made to or from the Banks Peninsula District Council.

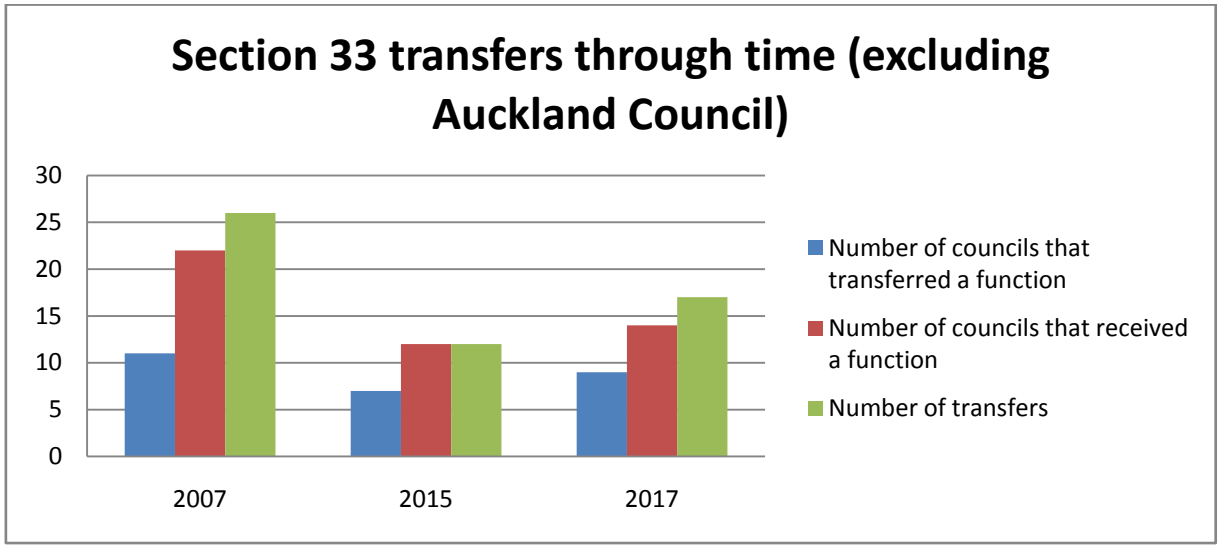

Figure 4 Section 33 transfers between 2007 and 2017 (excluding Auckland)[2].

Once the effect on s33 transfers of the amalgamation of the councils in the Auckland region were taken into account, there still appears to be an increase in the total number of existing s33 transfers. However, this apparent increase is due to transfers from regional councils in the Bay of Plenty, Hawke's Bay, Northland, Waikato and Southland to various district councils which were reported to exist by councils in my study, not being reported in the 2015 MfE study.

[2]Source: Data for 2000: Rennie and Thomson (2007), data for 2015: Ministry for the Environment (2015), data for 2017: Primary research.

The primary data collected for this study in 2017 found that five regional councils were currently involved in s33 transfers, with the Southland Regional Council and Otago Regional Council unable to confirm the status of a transfer to the Southland District Council and Central Otago District Council respectively. These transfers were not noted by the 2015 MfE study, so it is likely that they no longer exist. As noted by Rennie et al. (2000), it is of concern that there is no formal process for recording the end of a s33 transfer, as the use of such a process would assist in accurately recording existing and past s33 transfers. Four district or city councils were found to have s33 transfers in place to regional councils. The existing transfers in 2017 totalled 17, and these were made to 14 different councils by 9 councils.

Section 33 transfers to various district or city councils from the Bay of Plenty Regional Council, Northland Regional Council, Taranaki Regional Council and West Coast Regional Council that were not reported in the 2015 MfE study were reported to still exist when this research was undertaken in 2017, thus showing the apparent increase in s33 transfers between 2015 and 2017. The existence of these transfers was only known as they were reported in previous studies by Rennie and Thomson (2007) and Rennie et al. (2000). The report has found that there have been no new s33 transfers made by either regional or district/city councils since the 2015 MfE study, however a small number of s33 transfers are planned for the future and these are discussed later in this chapter.

Despite these inaccuracies of s33 transfer reporting, a number of transfers have been confirmed to no longer exist. Reasons for the lapse of the transfers have been provided by some councils; however other councils are unable to provide any reason for the lapse as they do not have access to any information relating to the lapse. In the case of the Otago Regional Council, the contact person was unable to confirm that the transfer had expired by 2015, but said that it may be the case rather than the transfer being overlooked.

The Hawke's Bay Regional Council contact person was unable to find information about the lapsing of the s33 transfers to the Central Hawke's Bay District Council, Hastings District Council, Napier District Council and Wairoa District Council. However, the contact person confirmed that the Hawke's Bay Regional Council was currently undertaking all of the activities relating to the s33 transfers and that this has been the case since 2008.

The Waikato Regional Council confirmed that two of the s33 transfers had lapsed, however were also unable to provide information on when this occurred. These transfers had been temporary as they had been implemented in the transitional period following the introduction of the RMA when the Waikato Regional Council considered it to be more efficient to allow the original regulators to manage certain functions until such a time that new RMA plans were in place. The final transfer

made by the Waikato Regional Council was described as a 'puzzle' as the contact person was unable to locate any staff members who had any knowledge about it.

5.2 Other methods used by local authorities to transfer functions

In order to address the secondary research objectives 'to determine if councils used other means to share responsibilities', local authorities were asked if they made use of any methods outside of s33 transfers to transfer functions, powers or duties to public or iwi authorities. A number of the councils that were contacted did not respond to the questions about other methods to share responsibilities; however 22 councils indicated that they currently use, or have used in the past, methods other than s33 (Table 1).

Table 1 Summary of methods outside of s33 used by local authorities to share responsibilities

Transferring authority	Receiving authority	Method used to transfer	Responsibility transferred
Bay of Plenty Regional Council	Waikato Regional Council	Building Act 2004[3]	Implementation of dam safety regulations
Tauranga County Council, now Tauranga City Council	Bay of Plenty Regional Council	Kaituna River District Act 1926	River control and management responsibilities
Tauranga City Council	Not specified	S233 Building Act 2004	Building consent authority functions, duties and powers
Environment Canterbury	Ngai Tahu	Co-governance arrangement	Te Waihora/Lake Ellesmere management
Environment Southland	Invercargill City Council	Local Government Act 2002	Transfer of the Passenger Transport function
Greater Wellington Regional Council	Another council (not specified which)	S38 RMA	Appointed officers from another council as RMA Enforcement Officers
Greater Wellington Regional Council	Various	As per s34A RMA	Hearing applications for resource consents
Hawke's Bay Regional Council	Not specified	As per s34 and s34A RMA	Delegation as per s34 and s34A RMA
Christchurch City Council	Committees and community boards	As per s34 RMA	Delegated duties and functions to committees and community boards

Table continued on following page.

[3]There may be additional councils who use the Building Act 2004 to share responsibilities; however these may not have been reported by the local authorities as they may not have thought it to be relevant to this study.

Transferring authority	Receiving authority	Method used to transfer	Responsibility transferred
Christchurch City Council	Independent Hearings Panel	Order in Council under the Canterbury Earthquake Recovery Act	Power to hear submissions and make decisions
Christchurch City Council	Six rūnanga within the district	Relationship Agreement	Building knowledge and understanding of tikanga and te reo, and supporting staff engagement
Gisborne District Council	Ngati Porou Iwi	As per s36B RMA	Joint management agreement with aspiration of s33 transfer in the future
Hurunui District Council	Committees and community boards	Local Government Act 2002	Delegated duties and functions to committees, sub- committees and community boards
Hutt City Council	Hearings Commissioners	Delegations / decision making powers	Resource consents and District Plan change matters
Kaikoura District Council	Te Runanga O Kaikoura	Mutual agreement	Runanga recommended representative would be appointed to ensure appropriate cultural awareness in decision making
Nelson City Council	Committees and community boards	Local Government Act 2002	Delegated duties and functions to committees and sub-committees
Rotorua Lakes Council	Te Arawa	Working relationship	Te Arawa recommended representatives appointed to Council committees
Rotorua Lakes Council	Bay of Plenty Regional Council	Local Government Act	Ability to enforce the Rotorua Lakes Council Air Quality Bylaw
Rotorua Lakes Council	Te Arawa River Iwi Trust	As per 36B RMA	Joint management agreement, including consultation and appointment of Commissioners
Southland District Council	Iwi representative	As per 34A RMA	Decision making on the proposed Southland District Plan 2012
South Waikato District Council	Raukawa and the Te Arawa River Iwi Trust	As per 36B RMA	Joint Management Agreement
Stratford District Council	Not specified	Contracted, service level agreements	Delivery of local government act functions
Tasman District Council	Department of Conservation	Delegated power, not under RMA	Enforcement powers delegated to rangers to deal with issues in national parks

Table continued on following page.

Transferring authority	Receiving authority	Method used to transfer	Responsibility transferred
Tararua District Council	Rangitane O Tamaki Nui A Rua	Memorandum of Partnership	Covers processes for engagement in decision making
Nelson City Council	Tasman District Council	Biosecurity Act 1993	Undertake work on behalf of Nelson City Council
Thames-Coromandel District Council	Certain iwi (not specified)	Memorandum of Understanding	Consultation around plan changes, comments on resource consents
Upper Hutt City Council	Not specified	S233 Building Act 2004	Building consent authority functions, duties and powers
Whanganui District Council	Local iwi (not specified)	Iwi commissioned by council to prepare a cultural assessment report	Engagement and consultation with local iwi authorities
Waitaki District Council	Te Runanga O Moeraki	Memorandum of Understanding	Guide the relationship between Council and the Runanga
Waitaki District Council	Waitaha Taiwhenua O Waitaki	Memorandum of Understanding	Guide the relationship between Council and the Runanga

In addition to the methods used by councils above, the Hurunui District Council describes its interactions with Ngai Tahu and Kaikoura and Ngai Tuahuriri Runanga as being 'a working relationship' (pers. comm., 2017). This relationship takes the form of the council seeking comment from the local runanga on any resource consent applications that may have an effect on aspects of the environment that are of importance or interest to Māori. If there are concerns that are raised by the runanga, the council then requires the applicant to consult with and obtain written consent from the affected runanga. The process used by the Hurunui District Council to involve runanga in resource consent applications predates the 2017 amendments to the RMA which makes this type of consultation almost compulsory. This type of relationship may also occur in other councils but may not be thought of as being sufficiently empowering or a formal enough arrangement to have been reported in my research survey. The Hurunui District Council also ensures that the iwi management plan for the region is used during any decision making process.

In 2009, the Hurunui District Council proposed the inclusion of an iwi representative in the Regulatory Committee; however the proposal was not supported by the wider community and never eventuated. As a result of the community reaction, the council has not actively sought the inclusion of iwi or runanga representatives in their delegated decision making committees.

Similar to the relationship of the Hurunui District Council and local iwi, the Tararua District Council Planning Officer and Regulatory Services Manager hold regular meetings with the RMA Officer of Rangitane O Tamaki Nui A Rua and have recently begun to hold regular meetings with Ngati Kahungunu. The Tararua District Council also encourages resource consent applicants to engage with iwi prior to submitting their application. The council has also involved iwi during the development of the Manawatu River Accord and Action Plan, the review of the District Plan and the development of the council's Annual Plan and Long Term Plan.

The Southland District Council has used s34A of the RMA in the past to appoint an iwi representative on a committee formed for the purpose of making decisions on the proposed Southland District Plan 2012. The council did not discuss if this decision was supported by the community or not.

Environment Southland discussed that the Local Government Act 2002 was previously used to transfer the passenger transport function to the Invercargill City Council in 2001.

5.2.1 Future s33 transfers

Four of the councils interviewed said that they were considering involvement in s33 transfers in the future. The Stratford District Council is currently in the process of undertaking a s33 transfer to the Taranaki Regional Council for contaminated land functions relating to land-farming, oil and gas.

The Taranaki Regional Council confirmed this, and that other district councils in the Taranaki region were also considering transferring their functions relating to land farming under the Contaminated Soil National Environmental Standard to the Taranaki Regional Council. Other district councils in the region did not mention this potential transfer.

The West Coast Regional Council replied that as of the 1st August 2017 the Westland District Council will transfer through s33 the function of monitoring compliance of mining operations in the Westland district to the West Coast Regional Council.

The Whangarei District Council advised that there is a proposal to transfer decisions relating to papakāinga to local iwi authorities. This would allow Māori landowners the ability to develop guidelines for the papakāinga development plan process. The representative from the council also advised that this proposal was under appeal at the time of this study.

5.3 Approaches by iwi for s33 transfers

Five of the councils surveyed during this study indicated that they had been approached in some capacity by iwi in relation to s33 transfers or other resource management agreements. Four of these were informal discussions, however in 2005 the Tauranga City Council was formally approached by

iwi for a s33 transfer. No information was provided by the council as to the desired content of the transfer.

The approach made for a s33 transfer from the Tauranga City Council was subsequently declined as a result of three issues, listed below:

1) *At the time the group that approached was a hapu and was not a recognised iwi authority.*

2) *Council was not satisfied that the hapu was sufficiently resourced to undertake the responsibilities transferred.*

3) *The proposal would have needed to be formally proposed to the community for full public consultation and submission. It was suspected that such a formal proposal was unlikely to succeed.*

The informal discussions have taken place between the Greater Wellington Regional Council, the Palmerston North City Council, the Tasman District Council and the Whanganui District Council. None of the councils had received a proposal from iwi, but some indicated that there was a possibility of receiving a proposal in the future.

Two councils, the Stratford District Council and the Palmerston North City Council, are expecting that once Treaty settlements have been completed there will be an increase in the number of conversations held between council and iwi in regards to s33 transfers, if not s33 transfers themselves.

5.4 Iwi Management Plans and s33 transfers

A number of Iwi Management Plans (IMP) note that iwi will seek greater involvement in resource management decision making processes through s33 transfers. There are eleven IMP that mention the seeking of s33 transfers, however these vary in the language used by iwi to describe their goals as well as the powers and responsibilities that iwi desire be transferred (Table 2). A further two IMP mention that s33 is a means to transfer power, but do not specifically mention that the iwi are seeking transfers.

Table 2 IMP that reference the desire of iwi to undertake s33 transfers

Region	Runanga	Iwi Management Plan
Auckland	Ngāti Whātua Ōrākei	Ngāti Whātua Ōrākei Iwi Management Plan 2012
Bay of Plenty	Ngāti Rangiwewehi	Ngāti Rangiwewehi Iwi Management Plan 2008
Bay of Plenty	Raukawa Charitable Trust	Raukawa Environmental Management Plan 2015
Bay of Plenty	Ngati Whare	Ngati Whare Iwi Management Plan 2011
Canterbury	Mahaanui Kurataiao Ltd (various Runanga)	Mahaanui Iwi Management Plan 2013
Canterbury	Ngāi Tahu	Te Poha o Tahu Raumati - Kaikōura Iwi Management Plan 2007
Canterbury/Otago	Kāi Tahu ki Otago	Kāi Tahu ki Otago Natural Resource Management Plan 1995
Southland	Ngāi Tahu	Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008
Waikato	Te Arawa River Iwi Trust	Te Arawa River Iwi Trust Environmental Management Plan 2015
Waikato	Ngāti Tūwharetoa	Ngāti Tūwharetoa Iwi Environmental Management Plan 2003
Northland	Te iwi o Ngatiwai	Ngātiwai Iwi Environmental Policy Document 2015
Northland	Patuharakeke	Patuharakeke Te Iwi Trust Board Hapū Environmental Management Plan 2015

The IMP of Ngāti Whātua Ōrākei references s33 transfers in relation to a number of aspects. The first is in relation to waters and the ecological systems that form part of Ōkahu Bay and other water bodies that have been identified as being of importance to the local hapū. For this area of resource management, the IMP refers to Ngāti Whātua Ōrākei as desiring to

> *'secure the transfer of powers and responsibilities under the RMA (s33 and/or s36B) to provide for meaningful involvement in the decision making process relating to policy document changes and resource consents'.*

In regards to other aspects, such as terrestrial biodiversity, landscapes and cultural heritage, the IMP refers to having

> *'authority devolved (under s33 of the RMA) or at least partners Council in the consideration of resource consent applications ... (under s36B of the RMA)'.*

The IMP later goes back to the original phrasing of securing a transfer of power when discussing the involvement of Ngāti Whātua Ōrākei in the decision making process relating to ancestral land.

> *'Secure from Auckland Council the transfer of powers and responsibilities under the RMA (s33 and/or s36B RMA) to provide for meaningful involvement in the management and decision making process relating to Ngāti Whātua Ōrākei ancestral land'.*

(Ngāti Whātua Ōrākei, 2012)

A research assistant from the Toki Taiao unit of Ngāti Whātua Ōrākei responded that there had not been any progress in securing the desired s33 transfers from the Auckland Council, and cited the reason as being that the transfers 'are undertaken at Council discretion' and that this was a common barrier to obtaining a s33 transfer.

There are four IMP within the Bay of Plenty region that mention s33 transfers. The first, the Te Awanui Tauranga Harbour IMP simply states that section 33 is important but that to date no transfers have occurred (Nga iwi o Tauranga Moana, 2008). The second, the Ngāti Rangiwewehi Iwi Environmental Management Plan, notes that 'Te Maru o Ngati Rangiwewehi will investigate further in to the use of Section 33' and also that if the iwi are to play a greater role in resource management that they will need sufficient resources in terms of staff and finances (Te Maru o Ngati Rangiwewehi, 2012).

The Raukawa Environmental Management Plan lists a number of objectives that the Raukawa iwi wish to achieve, including the recognition and safeguarding of important cultural landscapes for future generations. Consideration by local authorities of transfers made through s33 of the RMA is listed as one of the methods that would assist the iwi in achieving these objectives (Raukawa Charitable Trust, 2015).

The final IMP for the Bay of Plenty region that mentions s33 transfers is that of the Ngati Whare iwi. The Ngati Whare IMP refers to the iwi desiring a role where they are consulted on resource consent applications across a range of activities (Ngati Whare, 2011).

In Canterbury, the Mahaanui Iwi Management Plan notes the feasibility of appointing the Te Waihora Management Board as a joint consent authority for lake activities will be investigated, and if feasible,

the appointment will be made through s33 or s36B of the RMA (Mahaanui Kurataiao Ltd, 2013). However, the Te Waihora Management Board was disestablished by Ngāi Tahu in 2015 (Lomax, 2015).

The second IMP in Canterbury that mentions s33 is the Kaikōura Iwi Management Plan, that simply notes that s33 relates to Māori participation in resource management (Te Rūnanga o Kaikōura Inc, 2007).

In Otago, the Käi Tahu ki Otago Natural Resource Management Plan notes the importance of s33 and s42A of the RMA as furthering the involvement of Käi Tahu ki Otago in planning decisions, processes and monitoring. The plan also notes that these sections have yet to be implemented (Käi Tahu ki Otago, 2005).

In Southland, the Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan notes that one of the steps towards implementing the IMP involves the recognition and appropriate consideration of the use of s33 (Ngāi Tahu ki Murihiku, 2008).

In the Waikato region, the Te Arawa River Iwi Trust Environmental Management Plan mentions a number of aspirations of the Te Arawa River Iwi Trust (TARIT) and that s33 transfers are a means to achieve them. For the Trust, s33 transfers would include functions, powers and duties relating to the 'development and management of ancestral lands, waters and geothermal resources within the TARIT Area of Interest'(Te Arawa River Iwi Trust, 2015).

Also in the Waikato region, the Maniapoto Environmental Management Plan notes the usefulness of s33 transfers and that the Maniapoto iwi support opportunities to work with local authorities to implement s33 transfers (Maniapoto Māori Trust Board, 2015).

In Northland, there are two IMP that mention s33 transfers. The first, the Patuharakeke Te Iwi Trust Board Hapū Environmental Management Plan, mentions the purpose of s33 transfers and that the Patuharakeke iwi will 'seek management and decision making authority over key biological resources and their habitat over time via mechanisms such as s.33 transfers' (Patuharakeke Te Iwi Trust Board Inc, 2015).

A spokesperson from the Patuharakeke Te Iwi Trust Board said that there have been no s33 transfers to the iwi to date, citing a lack of time and capacity as the main reasons for this. The spokesperson mentioned that there may be progress towards transfers and co-management agreements through the Treaty settlement process, however this may be some time off as at the moment, the iwi is focusing on dealing with Treaty claims.

The second IMP for the Northland region that mentions s33 transfers is the Ngātiwai Iwi Environmental Policy Document. The document states a number of objectives of Ngātiwai and that a s33 transfer will assist in the achievement of these objectives. Aspects that Ngātiwai are considering for s33 include the protection of indigenous trees and vegetation on council owned land; and the protection of specific Wāhi Tapu on council owned land (Ngātiwai Trust Board, 2015).

5.5 Treaty settlements and s33 transfers

The document provided by the Office of Treaty Settlements provides a complete list of all Treaty settlements as at June 2017 (Appendix D). Although some Treaty settlements have been made prior to the year 2000, for the purpose of this study, only settlements made between 2000 and 2017 have been examined. There have been 71 Treaty settlements since 2000, 68 have been examined for the terms noted in the methodology section (33, joint, co-management and consultation); however three of the Treaty settlement documents were unable to be found through the Office of Treaty Settlements website. These are the 2006 Affiliate Te Arawa Iwi/Hapū settlement, the 2009 Whanganui On-Account settlement and the 2010 Upper Waikato River Iwi settlement.

Each Deed of Treaty settlement contains a section of redress from the Crown and this redress takes a number of forms; including co-management, joint committees/bodies and consultation roles for iwi. No mention of s33 transfers were found in any of the Deeds of Treaty settlement documents examined in this study. Five Treaty settlements did not mention any of the searched for terms. These were the settlements for Taranaki Whanui (Wellington), Ngāti Porou, Ngāti Whātua o Kaipara, Ngāti Whātua Ōrākei and Ngāti Ranginui. The range of redress agreements in Treaty settlements is displayed below (Table 3).

Table 3 Redress agreements in Treaty settlements between 2000 and 2017

Iwi	Co-management	Joint advisory committee	Consultation role	Other	Total number of iwi
Te Uri o Hau, Ngāti Koroki Kahukura (joint management), Tauranga Moana Iwi Collective (joint mgmt/administering)				Joint administering body	3
Ngāti Hauā, Te Wairoa			2	Joint administering body	2
Ngāti Ruanui, Ngaa Rauru Kiitahi, Ngāti Mūtunga, Te Roroa, Central North Island Collective, Ngāti Apa (North Island), Ngāti Kuia (Kurahaupo), Ngāti Apa ki te Ra To, Rangitāne o Wairau, Maraeroa A and B Block Settlement, Ngāti Mākino, Ngāti Manuhiri, Waitaha, Ngāti Rangiteaorere, Te Ātiawa o Te Waka-a-Māui; Ngāti Tama ki Te Tau Ihu, Maungaharuru Tangitū Hapū, Te Kawerau ā Maki, Te Atiawa (Taranaki), Ngāti Hineuru, Taranaki Iwi, Ngāti Kahungunu ki Heretaunga Tamatea, Ngāi Tai ki Tāmaki, Rangitāne o Manawatū, Ngatikahu ki Whangaroa, Ahuriri Hapū			25		25
Ngāti Tama, Ngāti Tūwharetoa (BOP)		2	2		2
Ngāti Awa				Joint Management Committee	1
Te Arawa Lakes, Ngāi Tamanuhiri, Whanganui				Joint Committee	3

Table continued on following page.

Iwi	Co-management	Joint advisory committee	Consultation role	Other	Total number of iwi
Affiliate Te Arawa, Waikato Tainui (River claim), Ngāti Raukawa (River), Ngāti Tūwharetoa (River interests), Ngāti Maniapoto (Waipa River), Ngāti Pāhauwera,	6				6
Ngāti Whare, Ngāti Manawa, Ngai Tūhoe,	3		3		3
Rongowhakaata, Te Aupōuri, Raukawa, Ngāi Takoto, Tapuika, Ngāti Kuri			6	Joint committee	6
Tāmaki Collective				Joint statutory role with the relevant Conservation Board	1
Te Rarawa		1	1		1
Ngāti Toa Rangātira			1	Strategic advisory committee	1
Ngāti Rangiwewehi, Ngāti Pūkenga, Ngāti Rarua, Ngāruahine, Rangitāne o Wairarapa Tāmaki Nui-a-Rua			5	Joint management body	5
Ngāti Koata			1	Jointly prepare and approve an operational plan with Director-General of Conservation	1
Ngāi Te Rangi	1			Joint management body	1
Total number of agreements in place	10	3	46	24	

Co-management agreements discussed in Treaty settlements included co-management of water resources such as the Waikato River, Waipa River and various other rivers; as well as conservation land in areas of interest to respective iwi. Co-management agreements might also facilitate iwi to exercise mana whakahaere (governance or authority) over other resources.

Joint committees or bodies took two forms; the first allowing iwi to hold an advisory position on the committee and the second which gave iwi a management role on the respective committee. Five types of joint committees or bodies were identified by Treaty settlements; including:

- A joint advisory committee which would involve iwi advising the Minister of Conservation and/or the Director-General of Conservation when management plans were being prepared or approved.

- A joint committee would have the purpose of promoting sustainable management and allow for the traditional relationship of iwi to be recognised by a local leadership body, for present and future generations.

- A joint administering body has the purpose of allowing iwi to manage certain historic, recreational and scenic reserves.

- A joint management committee allows iwi to carry out certain delegated powers and functions.

- A joint management body allows iwi to be the administering body for a reserve.

Consultation agreements found in Deeds of Treaty settlement covered a number of aspects; including consultation on:

- Fisheries management (mainly in regards to eel fisheries; however other species were also mentioned).

- Māori place names by the New Zealand Geographic Board.

- The creation of draft plans and the relationships that iwi have with particular areas (draft beach management plans are specifically mentioned).

- The approval of any general policy, conservation management strategy, conservation management plan or national park management plan by the New Zealand Conservation Authority and any relevant conservation board .

- The use of certain powers and functions by the Director-General of Conservation that are likely to affect the relationship of iwi with specific resources.

- The creation of any new publication or display that includes information about the history or relationship of iwi to the land, to ensure that the information is correct.

- Easements.

One iwi, Ngāti Toa Rangātira, would make use of a strategic advisory committee, which would provide advice to the Minister of Conservation and the Director-General of Conservation and would provide joint approval on any conservation management plans for the area.

5.6 New Zealand case law and s33 transfers

There were three results for case law in the Westlaw database for cases that related to s33 transfers. The case law shows that there is some disagreement or confusion over when it is appropriate to use s33 but has also provided guidance on the types of functions, powers and duties that may be included in a s33 transfer.

The first case is in relation to the commercialisation of the Whakarewarewa Village, which would allow the manufacturing, processing and selling of Māori arts and crafts within the village. The application was declined by the Rotorua District Council as the activity would have an effect on many of the residential properties in the village. This decision was appealed by the Whakarewarewa Village Charitable Trust and one of the submitters in support of the appeal mentioned that s33 could be used to transfer functions of the council to an iwi authority. However, as the functions in question relate to the original refusal of the resource consent application, the Rotorua District Council determined that s33 could not be invoked and this decision was upheld by the Court (*Whakarewarewa Village Charitable Trust v Rotorua District Council*, 1994).

The second case that mentions s33 transfers is that of Sea-Tow Ltd v Auckland Region. The judgement text of this case makes it clear that it is the relevant council who decides whether or not to transfer any functions, duties or powers to another authority (*Sea-Tow Ltd v Auckland Region*, 1993).

The third case, Environmental Defence Society Inc v Northland Regional Council, discusses the inadequate level of involvement that Te Tai Tokerau tangata whenua have in planning decisions. The iwi see the proposed Northland Regional Policy Statement as an opportunity to increase their involvement in resource management as they consider that regional and district councils are not meeting their obligations under the RMA. The iwi note that s33 or s36B may be used to increase their involvement, but that there has been no transfers or joint management agreements in Northland (*Environmental Defence Society Inc v Northland Regional Council*, 2015).

As noted by Rennie et al. (2000), case law that involves s33 transfers is limited, but has assisted in determining that iwi authorities may be granted the power to act as consent authorities in the same

manner as local authorities; however they may not be granted the same degree of power as the Environment Court when considering appeals.

5.7 Conclusion

The results of this research show that there have been no s33 transfers to iwi, despite multiple IMPs showing a desire for this to occur. In a comparison of s33 transfers over time it can be seen that the use of s33 transfers has decreased, although local authorities still appear to be aware of them as district councils in the Taranaki and West Coast regions will be transferring functions to the respective regional councils later in 2017.

The local authorities who were interviewed for this research indicated that only one formal approach for s33 transfers had been made by iwi (to the Tauranga District Council), however multiple councils had participated in informal discussions on the subject. Informal discussions between local authorities and iwi, as well as information included in Treaty settlements indicate a clear desire by iwi to be involved in resource management and planning decisions, including using s33.

In addition to s33 transfers, local authorities use a large number of other methods to share power and responsibilities between each other. Some of these agreements have been between local authorities and iwi; however most do not involve iwi participation.

Chapter 6

Discussion

6.1 Introduction

In order to address the primary research objective of establishing whether or not there has been any progress in powers being transferred to iwi through s33 and the reasons for this occurring or not, the key themes from the literature review must be examined, as must the conclusions to the secondary research questions. The key themes and findings, secondary questions and their significance for this research will be discussed in the following sections, before a final conclusion is made as to what can be learned from this research. Issues uncovered during the course of this research project are also discussed.

6.2 Key Themes and Findings

Throughout the literature review, a number of key themes relating to power and the ability of indigenous people to hold power and be involved in resource management became apparent. The first theme that is apparent is the loss of power over resource management that indigenous people experienced due to colonisation. The second key theme is that there are empowered as well as powerless people and there is often a struggle to decrease the disparity of power between these groups, which usually take the form of government authorities holding power while indigenous people have little power. The literature identifies that this is not neccessarily a disadvantage to those with less power, however it is something to be aware of and take into consideration when decisions are being made. The third key theme is that the dual nature of indigenous and Western planning practices should be recognised in order to ensure planning practices are efficient and effective. In more recent years there have been various mechanisms put in place such as co-management, joint-management or co-governance arrangements to allow for this. Through the use of these mechanisms, it appears that the disparity in power between government and indigenous people has been acknowledged and there has been a shift towards recognising the value that indigenous knowledge and experiences can contribute to resource management and planning decisions.

These key themes are also apparent when examining colonisation and power relationships between authorities and indigenous people in the New Zealand context. The first key theme is demonstrated through Western settlement in New Zealand and the subsequent signing of the Treaty of Waitangi, whereby Māori people were made subject to British rule and lost the ability to maintain sovereignty over their lands. The second key theme is shown through the reluctance of local authorities to make transfers to iwi authorities through s33, while being prepared to enter into other types of power

sharing agreements with iwi, provided that the local authorities retain their ultimate hold on power rather than share this power with iwi authorities. The third key theme is illustrated in New Zealand through the range of legislative provisions that are available, so that Māori may regain some of the power over resources that are predominantly controlled by government authorities at the present time.

As well as the key themes discussed above, previous studies have identified a number of barriers to s33 transfers, and the sharing of power in general. The existence of these barriers has been somewhat confirmed by this research, as has the existence of an additonal barrier, whereby caselaw has dictated that the decision to make a s33 transfer or not remains at the discretion of the local authority, leaving iwi in a rather powerless position.

The research undertaken for this dissertation has confirmed that these key themes are still relevant in the relationships between local authorities and iwi today. There are still many discussions and processes in place to rectify past wrongs, and many iwi planning documents demonstrate a strong desire for an increase in Māori involvement/power in resource management. The key themes identified above and their relevance to the research included in this dissertaion are discussed further in the following sections.

6.2.1 Effect of colonisation

As described in the literature review, one of the effects of colonisation is that indigenous people lost much of their control over traditional land and resources (Balint et al., 2014). And as a means to rectify the injustice caused through colonisation, mechanisms to offer redress have been implemented (Berke et al., 2002). The IMPs, Deeds of Treaty Settlements and case law documents that were examined as part of this research all provide evidence that Māori in New Zealand did indeed lose power over resources when the country was colonised by Western settlers. If this was not the case, these documents would surely have no reason to exist and Māori would be able to exert the same power over land and resources as they had prior to colonisation.

However, the IMPs, Treaty settlements and case law documents affirm and provide some insight into the desire of Māori to have greater involvement in resource management in the future, in effect to take back power to greater or lesser degrees. According to these documents, this involvement would include Māori having greater control over resources such as water, ecological systems, terrestrial biodiversity, landscapes, geothermal resources, cultural heritage and ancestral land in certain areas where these aspects have been identified as being important to local hapū. In addition to these aspects, one IMP noted that the iwi wished to be consulted on resource consent applications, while

another noted that s33 transfers were seen as a means to provide greater involvement in planning decisions, processes and monitoring.

The preference for a mechanism that allows for this greater control over resources appears to be through a s33 transfer. However, it appears that iwi are realistic and realise that this may not occur due to the unwillingness of local authorities to relinquish power, and thus the IMPs cite s36B RMA as an alternative that will allow them to obtain similar control through the use of a joint-management agreement between the iwi authority and the local authority.

Deeds of Treaty settlements do not mention s33 transfers, however they do also indicate that there has been a loss of power and provide suggestions and mechanisms for how iwi could be re-empowered. These methods include co-management agreements, joint committees/bodies and consultation roles for iwi. The types of resources that would be governed by these agreements include water resources, conservation land in areas of interest to respective iwi, fisheries, unspecified other resources, the management of certain reserves and the recognition of traditional relationships with the land. These mechanisms all fall short of complete re-empowerment.

An additional aspect that was noted in the Deeds of Treaty settlement documents was the ability to provide advice to the Minister of Conservation and/or the Director-General of Conservation in relation to management plans that are being prepared or approved.

6.2.2 Empowered and powerless people

The second key finding of this research aligns with a theme discussed by Howitt (2001) that there are empowered as well as powerless people, and the relationships between these two groups can have an effect on resource management. In the example of the Ngāti Whātua Ōrākei iwi and the Auckland Council, the council clearly holds power, while the iwi are somewhat powerless. Although the purpose of s33 is to devolve power, the power of the actual implementation of s33 transfers rests solely with the local authority involved. The local authority may determine who they will make a transfer to, and may also revoke the transfer simply by giving notice to the transfer recipient. In some instances, it may indeed be necessary for the local authority to take back any transferred power if the function in question is not being carried out effectively; however this ability leaves the recipient authorities at the mercy of the transferring authority.

This perhaps points to a need for a different kind of power transferring system, one where each party has equal power and if functions are not being carried out to a suitable standard, a third (and impartial) party may become involved in the process in order to determine the best course of action and who should take responsibility for the role in the future. In New Zealand, the courts could be this third party; however this may cause unnecessary stress and cost to other organisations.

On the other hand, as indicated by the uproar over the then Mayor of New Plymouth, Andrew Judd, campaigning for a Māori ward in the town (Owen, 2016), the general New Zealand public may not be ready for an increase in Māori presence in resource management. The creation of Māori wards is provided for under the Local Electoral Act 2001, and as such the Mayor proposed creating a Māori ward to allow for better presentation of Māori interests within the local council. The local council voted in favour of the creation of the Māori ward in 2014; however in 2015 a citizen initiated referendum largely voted against this, leading to the proposal being declined and subsequently the Mayor not seeking to be re-elected at the end of his term due to concerns that this proposal had caused a split in the community.

Possibly also indicative of the reluctance of local authorities to truly transfer powers to public authorities is the use of methods outside of s33 to share power. All of these arrangements are just that – power being shared rather than transferred. As occurred in New Plymouth where the public were not supportive of Māori wards being established, it may be the case that local authorities are concerned with public opinion regarding the transfer of power and what the repercussions are of this, or they may simply not desire to share power equally with other authorities. In all, but one of the alternative power sharing arrangements used and reported by local authorities for this study, ultimate decision making power remains with the local authority. Only one local authority, Environment Canterbury, reported using a co-governance arrangement to share power and responsibility with Ngai Tahu in managing Te Waihora/Lake Ellesmere.

This makes it apparent that there is some underlying reason for a lack of true power sharing, however the precise reason for this is difficult to determine. What can be said though, is that there are groups who have power and groups who do not and are subject to those who do hold power.

When reflecting on the findings of my research as well as the findings from previous studies, I do not desire to accuse any local authorities of acting in a biased manner, however one of the underlying reasons for the lack of s33 transfers may be due to councils perceiving a negative reaction from the general public if a s33 transfer is made to an iwi authority. A second reason may be due to the difficulty of differentiating between iwi and hapu groups and which of these groups has traditionally held control over a particular resource or area. This is further complicated as the political structure of Māori does not necessarily fit well with the s33 legislative requirements (Berke et al., 2002; McCrossin, 2013). This will make it difficult for local authorities to decide who to grant a s33 transfer to, and it may be simpler to refuse s33 transfers altogether.

However, there may be an evolution of the understanding of the political structure of Māori as indicated by the Marine and Coastal Area (Takutai Moana) Act 2011 which recognises the status and

authority of Māori at the iwi, hapū, and whānau level. The provisions of this Act may need to be reflected upon in s33 in order to make it easier to implement s33 transfers over specific resources.

6.2.3 Dual nature of planning practices

The third theme identified in the literature review chapter is that there is a need for the relationship between Western and indigenous planning practices to be recognised in colonised countries (Matunga, 2013; Porter, 2010). Recognising the link between the two approaches will allow for more succesful future planning practices as each group holds different knowledge and the most successful outcome can be reached if this knowledge is combined. However, this view does not appear to be supported by the data gathered for my study. Rather, it appears as though local authorities would prefer to maintain power over resources by not making any s33 transfers to iwi when requested and preferring to have a relationship where the input and desires of iwi is not of much value.

As per the discussion in the literature review, if this dual approach is not taken there is a risk that indigenous values will continue to be overshadowed by Western planning practices, undermining all the effort that has taken place to date to restore justice to indigenous people. The provision of s64(2A)(a) RMA for local authorities to 'take into account any relevant planning document recognised by an iwi authority' shows a step in the right direction for taking a dual approach; however the failure to achieve s33 transfers identified in some IMPs suggests that there are shortcomings in the actual implementation of the provisions. However, even with this dual approach being taken, there is still a danger that indigenous values will not be heard as power sharing agreements typically originate from colonial legislation.

New Zealand legislation appears to allow for the duality of planning practices, as many legislative documents include provisions requiring the involvement of Māori in resource management and planning decisions. However, the example of New Plymouth and the opposition to the establishment of Māori wards, although this was allowed for through the Local Electoral Act 2001, shows that even though legislation is in place, it is not necessarily effective in achieving its purpose.

Despite this, during the course of writing this dissertation, there have been amendments made to the RMA to improve engagement between local authorities and iwi. These amendments came into effect on the 19th April 2017 as a means to achieve more consistent engagement between these two groups, as to date the effectiveness of relationships between councils and iwi have varied greatly throughout New Zealand (Ministry for the Environment, 2017).

In a factsheet about the amendments, the Ministry for the Environment (2017) note that there are a variety of arrangements, ranging from informal to formal relationships between councils and iwi in some regions of New Zealand; however in other regions there are very limited opportunities for

Māori to participate in resource management. The reason given by the Ministry for the Environment for this is that there is a lack of stautory requirements for councils to engage with iwi at a meaningful level. Through the amendments, iwi will have better opportunities to participate in plan making processes as there is a requirement for councils to engage with iwi authorities on draft plans/policy statements before notification, section 32 evaluation reports must consider iwi advice to councils and iwi authorities will be consulted when commissioners are appointed in order to determine whether the appointed commissioner is required to have an understanding of tikanga Māori. A new process for establishing relationships between local authorities and iwi will also be introduced, whereby iwi or councils may 'invite' the other party to form an arrangement to enable iwi participation in decision making. Although not specific to s33 transfers, the introduction of this process may assist in overcoming the 'lack of process' barrier to s33 transfers identified by Rennie et al. (2000), and confirmed by this research.

As these amendments were only made recently, it remains to be seen whether or not they have the intended effect of improving relationships and engagement between iwi and local authorities. Certainly a more centralised, statutory approach may assist in providing guidance for local authorities who do not yet have any form of relationship agreement with local iwi. As one of the reasons for a lack of s33 transfers to iwi was the lack of a clear process to follow, this may be the catalyst needed for future transfers. However, time will tell if this is a step towards making progress for iwi involvement in resource management or merely a token gesture intended to give the illusion of progress being made.

6.3 Secondary Research Questions

The secondary research questions relating to the primary research objective are discussed in the following sections. These questions have assisted in identifying other methods used to share power between local authorities and iwi, the reasons for the lack of transfers between local authorities and iwi, the effect of Treaty settlements on s33 transfers and the possibility of s33 transfers in the future.

6.3.1 Are other methods used to share functions, powers or duties with public or iwi authorities?

This research has found that there are a number of alternative methods used by local authorities to share functions, powers or duties with other local authorities and public authorities. Of the 30 reported instances of other methods used to share power, 13 of these were to iwi or runanga. The remaining instances were either between city/district and regional councils or from local authorities to committees and community boards.

The power shared between local authorities and iwi or runanga took the form of s34/34A RMA delegations (1), co-governance arrangements (1), relationship agreements (1), s36B RMA joint management agreements (3), mutual agreements (1), working relationships (1), Memorandums of Partnership (1), Memorandums of Understanding (3) and the commissioning of iwi to prepare a cultural assessment report (1).

The existence of these power sharing agreements do show that local authorities are capable of sharing responsibilities with iwi, however with each of these agreements, excepting the co-governance arrangement, the ultimate power remains with the local authority. However, each of these agreements allows the local authority to revoke the agreement by giving notice to the other party. So although these methods appear to be sharing power, the balance of power is still unequal.

6.3.2 What are the reasons given by councils for not transferring responsibilities under section 33 and are these reasons the same as in the study by Thomson et al. (2000)?

As identified by previous studies such as the one by Thomson et al. (2000), there are a number of barriers to achieving greater iwi involvement in resource management. These have previously been identified as a lack of formal process for local authorities to follow, a lack of clarity as to what defines an iwi authority and concerns that iwi lacked the resources to undertake any transferred functions, powers or duties. Through the research process, additional barriers to s33 transfers and power sharing agreements have also been identified.

While the lack of a formal process for s33 transfers was not specifically identified by participants in this research as a barrier to making a transfer, responses from local authorities did indicate a lack of approaches (either formal or informal) by iwi for s33 transfers. This may be due to there being no clear process to follow, thus making it difficult for iwi or local authorities to know how to initiate such a transfer; however the existence of transfers to other local authorities indicates that there is at least some knowledge of how to make a transfer. Therefore, the lack of approaches for s33 transfers may simply be due to iwi having other priorities at the present time, having no desire for a s33 transfer or already having any desired power sharing agreements in place.

The second barrier identified by previous research was that there is a lack of clarity as to what defines an iwi authority. This barrier was cited by only one council, the Tauranga City Council, as one of the reasons why a formal approach by iwi for a s33 transfer was declined. The reason given by the council was that at the time of the proposed s33 transfer, the group that approached the council was a hapu not an iwi. This does show that there is perhaps some confusion over who is allowed to receive s33 transfers, despite the provisions of the RMA. While no details were provided as to the functions that were requested to be transferred, this may suggest that s33 should be modified to

allow functions to be carried out by smaller groups if it is more appropriate for them to do so, particularly if that smaller group has more connections and history with the resource or land in question. However, this could also result in management strategies becoming fragmented and ineffective.

The third barrier identified by previous research was that iwi possibly lacked the resources and capability to undertake the functions, powers or duties that were transferred to them. Research for this study also identified this barrier as being a reason for a lack of transfers. The Ngāti Rangiwewehi Iwi Environmental Management Plan notes that if the Ngāti Rangiwewehi iwi are to gain greater control over resources, they require sufficient numbers of staff and increased financial capability. Additionally, a spokesperson from the Patuharakeke Te Iwi Trust Board identified a lack of resources, in terms of time and staff capacity, as a barrier to s33 transfers. While not specifically mentioning s33 transfers, the iwi spokesperson is hopeful that once Treaty claims are completed, there may be progress towards some form of power sharing agreements.

A fourth barrier to s33 transfers was identified by Ngāti Whātua Ōrākei; this being that the ultimate power in granting transfers remains with local authorities. In their response to the email survey, the iwi noted that there has been no progress in gaining s33 transfers of any functions, powers or duties from the Auckland Council and that the reason for this was that any transfers are made at the discretion of the council. The *Sea-Tow Ltd v Auckland Region* 1993) case also highlighted that this was occurring as the judgement text notes that it is the local authority who makes the decision to (or not to) transfer any functions, duties or powers.

As a fifth barrier, and in a similar context to what occurred in New Plymouth regarding the establishment of Māori wards, is information provided by the Hurunui District Council in relation to public opinion and support of greater iwi involvement in resource management. In 2009 the council had the opportunity to include an iwi representative in a delegated committee; however the proposal to do this was not supported by the community and as a result never eventuated. This barrier shows that community/public opinions may influence the actions that councils take, perhaps suggesting that in order for iwi to gain the power they desire over resources, some action must be taken to educate the wider community as to the values of councils and iwi working together to manage resources.

6.3.3 If Treaty settlements since 2000 have increased the number of section 33 transfers to iwi?

Although there have been 71 Treaty settlements made since 2000, there is yet to be a s33 transfer made to iwi. As previously discussed in the results chapter, 68 of these 71 Treaty settlements were

able to be examined for mention of s33 transfers, however none of them made any reference to seeking a transfer, instead seeking other methods of sharing power between local authorities and iwi.

As such, it would appear that Treaty settlements have had very little (if any) impact on s33 transfers, although the Whangarei District Council indicated that there would likely be a s33 transfer to iwi authorities to allow for Māori land owners to develop guidelines for a papakāinga development plan process. It is difficult to determine whether or not this is as a result of Treaty settlements occurring, as a Treaty settlement document for Te Iwi o Ngātiwai is yet to be created. However, other Treaty settlements may have influenced the decision of the iwi and council to propose this transfer. Further research on this specific proposal would be required to determine the cause for the initiation of this transfer; however this is outside of the scope for this particular research project.

6.3.4 Is there potential for s33 transfers to iwi authorities in the future?

References to s33 transfers in IMPs appear to indicate that there may be transfers to iwi authorities in the future. Eleven IMP note that s33 transfers will be sought between iwi and local authorities, however the response from runanga and iwi representatives was poor, so it is difficult to ascertain with any certainty what the future of s33 transfers to iwi is likely to be. The representatives who did respond noted that resourcing was an issue, as resources were presently being used to deal with Treaty settlements; however one representative said that through the Treaty settlement process, some progress may be made towards s33 transfers in the future.

While the question of the likelihood of s33 transfers to iwi authorities in the future was not directly posed to local authorities, two councils did report that they would expect proposals for s33 transfers once Treaty settlements have been completed. At the very least, these councils anticipated more conversations between local authorities and iwi authorities in relation to resource management and decision making, if not actual s33 transfers.

While a very small data set upon which to base any conclusions, it would appear that there may be s33 transfers to iwi authorities in the future, or at least proposals from iwi authorities to local authorities for s33 transfers. However, the specifics of any Treaty settlements or other agreements between local authorities and iwi authorities would play a role in this. Iwi may gain the power they desire through the Treaty settlement process and no longer specifically desire a s33 transfer, or the existing relationships and agreements between local authorities and iwi authorities may provide enough power to iwi over resources and decision making processes.

6.4 Issues

As previously discussed in the key findings section that no s33 transfers had been made to iwi authorities, an additional finding was that the overall numbers of s33 transfers had decreased and then appeared to increase again at the time of this study in 2017. Some of this change could be accounted for due to the amalgamation of local authorities in Auckland or s33 transfers that were only intended to be used for a short period of time, however there is also evidence that the changes are simply due to poor record keeping and the lack of a central database of s33 transfers.

One of the reasons for the decrease in s33 transfers appears to be that some of the existing transfers may have been excluded from the 2015 Ministry for the Environment stock take. The Bay of Plenty Regional Council, Northland Regional Council, Taranaki Regional Council and Tauranga District Council have confirmed that although the transfers made by those councils are not listed in the 2015 stock take, they are still in place in 2017. The response from the Bay of Plenty Regional Council was that they were unsure why the transfer was not listed in the MfE stock take, while the Northland Regional Council stated that the transfer must have been 'overlooked by the stock take'. The Taranaki Regional Council and Tauranga District Council only provided information stating that the transfers were still in place. This raises two potential issues, as either:

1) Councils have not provided accurate data in this study

2) Councils provided inaccurate data in the 2015 stock take

In either case, it is difficult to determine what additional steps could be taken to ensure that correct and up-to-date data is supplied by local authorities. The only possible way of potentially achieving a comprehensive data set of s33 transfers is to compare data from any previous studies and make note of any discrepancies and investigate these further.

The under reporting of s33 transfers to the MfE has been identified in the research for this dissertation and the previous study by Rennie et al. (2000), and should be of concern to the MfE. If the statutory powers of the Ministry are not sufficient to achieve accurate reporting in this relatively simple administrative area, then how sound is the data for other areas upon which the Ministry makes decisions? The MfE should not have to resort to making LGOIMA requests for accurate data when this data should be expected to be provided through s35 RMA provisions.

To address this issue and as discussed by (Rennie et al., 2000) there is an indication of a need for a central database that would hold information about s33 transfers, such as when they were initiated or proposed, details of the transfer itself, what the outcome of the proposal was, the length of time that the transfer will be in place and details of when the transfer lapsed. If correctly maintained, this

would provide accurate data on s33 transfers past and present as well as remove any potential confusion over who is responsible for carrying out particular functions, powers or duties.

While confusion as to who is responsible for carrying out any functions, powers or duties was not raised as an issue by any local authorities at the present tine; this has potential to become an issue if s33 transfers are used more widely and poor record keeping continues.

6.5 Conclusion

By examining the key themes from the literature review, how these play out in New Zealand and by answering the secondary research questions, a conclusion as to the progress of the transfer of power from local authorities to iwi authorities and the reasons for this can be made.

On one hand, it can be said that there has been very little progress made towards granting iwi authorities greater power over resources through s33 transfers as there have been no transfers made to iwi since the establishment of the RMA in 1991. However, s33 transfers and other power sharing arrangements do appear to be on the radar of many iwi and local authorities, but these groups are also managing the Treaty settlement process which is currently taking preference over other issues.

Although there has been a lack of transfers to iwi authorities, there have also been no transfers made to other public authorities in the same time frame. So perhaps rather than thinking of the reluctance to make a s33 transfer as being solely between local authorities and iwi authorities, the issue is wider, and local authorities are simply unwilling to share power with any organisation other than one that exists at the local government level. As well as having implications for iwi and their ability to manage resources as they had prior to colonisation, this may have implications for the wider community as well. In essence, the community is at the mercy of local authorities to decide what may or may not occur in a specific area. There are many good reasons for this to ensure long term sustainability of the area and its resources; however it should not be too much to ask for a suitable community (or iwi) group to share power with a local authority as the community must live with the consequences of any decisions made by the local authority.

Chapter 7

Conclusion

7.1 Introduction

The purpose of this research was to find an answer to whether or not there had been any progress made in the transfer of powers through s33 to iwi authorities from local authorities, and if not, the reasons for this being so. The responses received from local authorities indicated that while s33 is being utilised, there have not been any transfers made to iwi authorities, nor have many councils been approached by iwi authorities in relation to a s33 transfer taking place.

As outlined in the literature review chapter of this report, power relationships between local authorities and indigenous people has long been a focal point in the planning and resource management sphere. Importantly, the existence of power and who holds it must be recognised, as must the implications for those who do not hold as much power. The dual nature of integrating indigenous and Western planning practices is also highlighted.

In the case of New Zealand, there have been many legislative provisions made with the intent to increase the participation of Māori in resource management and provide empowerment as a means of redress to past harm caused through colonisation. However, past studies indicate that these legislative provisions have very little actual effect as mechanisms such as s33 transfers are not utilised between local authorities and iwi authorities. Other provisions, such as co-management, joint-management, consultation or relationship agreements which allow power to remain with local authorities are more widely used.

Despite these findings and concerns over the lack of empowerment for iwi being raised in previous studies, very little progress has been made. This could lead one to conclude that the inclusion of s33 in the RMA is of very little value if it is not being used in the full intended capacity, which is to enable the empowerment of public authorities through the transfer of functions, powers and duties.

7.2 Limitations

As with any research, it should be noted that there are a number of limitations to this study that should be taken into account. These limitations include the varying detail of responses to survey questions, the variable institutional knowledge/record keeping by local authorities, the low response rate from iwi and the use of the term ‘transfer’ in the survey questionnaire where the term ‘share’ would have been more appropriate.

Despite these limitations there was an overall high response rate from local authorities and the comments received through the survey process gives me confidence in the robustness of the findings, at least with regards to the position of local authorities.

7.3 Future research

There are a number of opportunities for future research around the subject of power sharing agreements. Further research may assist in determining what can be done in order to move forward and progress relationships between local authorities, iwi authorities and communities.

In particular, future research could focus on Treaty settlement documents and the outcomes resulting from these. It may be that iwi are granted the power and authority they desire over resources as a result of the Treaty settlements, removing the need for other types of power sharing agreements. This research could assist in determining whether or not the agreements discussed in the Treaty settlement documents are being used, and how effective they are, as they may be a suitable alternative to s33 transfers.

Future research could also examine the recent amendments to the RMA, which should theoretically increase the ability of iwi to participate in resource management decisions. The research could determine how effective these amendments are, or see if they are merely a gesture designed to give the illusion of progress.

As has been suggested by McCrossin (2013), future research on each type of agreement between local authorities and iwi may also be undertaken to establish the type of agreement that is most successful. This research could identify the most effective and preferred agreements between councils and iwi, and provide guidance for resource management agreements in the future.

Through better understanding of effective resource management agreements in this post-colonial time, progress can be made towards a future where iwi and local authorities are equally empowered, perhaps allowing the importance of sustainability and traditional knowledge to be recognised and valued by both groups.

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Appendix A

Contact people from local authorities and runanga

A.1 Regional authorities

Table 4 List of New Zealand regional authorities and contact people

Local authority	Contact person
Auckland Council	Alan Moore
Bay of Plenty Regional Council	Stephen Lamb
Environment Canterbury	Sonya Mitchell
Environment Southland	Ken Swinney
Greater Wellington Regional Council	Sharon Hornal
Hawke's Bay Regional Council	Annette Brosnan
Horizons Regional Council	Craig Grant
Northland Regional Council	Paul Maxwell
Otago Regional Council	Elyse Neville
Taranaki Regional Council	Delia Smith
Waikato Regional Council	Lisa Bedford, Mark Brockelsby
West Coast Regional Council	Lillie Sadler

A.2 Territorial authorities

Table 5 List of New Zealand territorial authorities and contact people

Local authority	Contact person
Ashburton District Council	Ian Hyde
Buller District Council	Rachel Townrow
Carterton District Council	Dave Gittings
Central Hawke's Bay District Council	Nicola McKay
Central Otago District Council	Kas McEntyre
Chatham Islands Council	Trudee Thomas
Christchurch City Council	Adair Bruorton
Clutha District Council	David Campbell
Dunedin City Council	Arlene Goss, Janet Leong
Far North District Council	Pat Killalea
Gisborne District Council	Keriana Wilcox-Taylor
Gore District Council	Rosie Given
Grey District Council	Katrina Lee
Hamilton City Council	Amy Viggers
Hastings District Council	Diane Joyce
Hauraki District Council	Mark Buttimore
Horowhenua District Council	Robinson Dembetembe
Hurunui District Council	Sean Crocker
Hutt City Council	Tim Johnstone
Invercargill City Council	Terence Boylan
Kaikoura District Council	Alex McCormack
Kaipara District Council	Linda Osborne
Kapiti Coast District Council	Sarah Lloyd
Kawerau District Council	Chris Jensen

Mackenzie District Council	Toni (toni@mackenzie.govt.nz)
Manawatu District Council	Lorraine Thompson
Marlborough District Council	Anna Eatherley
Masterton District Council	Sue Southey
Matamata-Piako District Council	Eion Scott
Napier City Council	Deborah Smith
Nelson City Council	Coralie Barker
New Plymouth District Council	Lynn Williams
Opotiki District Council	Ross Gardiner
Otorohanga District Council	Andrew Loe
Palmerston North City Council	Michael Dundaim
Porirua City Council	Alexis White
Queenstown Lakes District Council	Blair Devlin
Rangitikei District Council	Katrina Gray
Rotorua Lakes Council	Kate Dahm
Ruapehu District Council	Sandra Holman
Selwyn District Council	Jesse Burgess
South Taranaki District Council	Sonia (privacy officer)
South Waikato District Council	Sylvia Shepherd
South Wairarapa District Council	Russell Hooper
Southland District Council	Marcus Roy
Stratford District Council	Liam Dagg
Tararua District Council	Nicole McPeak
Tasman District Council	Dennis Bush-King
Taupo District Council	Heather Williams
Tauranga City Council	Karen Cowan
Thames-Coromandel District Council	Leigh Robcke
Timaru District Council	Mark Geddes
Upper Hutt City Council	Karen Patterson
Waikato District Council	Gudrun Jones
Waimakariri District Council	Did not respond
Waimate District Council	Kevin Tiffen
Waipa District Council	Gareth Moran
Wairoa District Council	Hinetākoha Viriaere
Waitaki District Council	Lynley Scott
Waitomo District Council	Terenna Kelly
Wellington City Council	Nicole Heron
Western Bay of Plenty District Council	Did not respond
Westland District Council	Vanessa Watson
Whakatane District Council	Charlotte Spencer
Whanganui District Council	Connor Marner
Whangarei District Council	Kathryn Candy

A.3 Runanga with s33 mentioned in IMP

Table 6 Runanga contacted as a result of their IMP including a reference to s33 transfers

Runanga	Contact	Iwi Management Plan
Ngāti Whātua Ōrākei	Andrew Brown[4] (andrewb@ngatiwhatuaorakei.com)	Ngāti Whātua Ōrākei Iwi Management Plan 2012
Ngāti Rangiwewehi	info@rangiwewehi.com	Ngāti Rangiwewehi Iwi Management Plan 2008
Raukawa Charitable Trust	Emere Murfitt (Emere.Murfitt@raukawa.Māori.nz)	Raukawa Environmental Management Plan 2015
Ngati Whare	admin@ngatiwhare.iwi.nz	Ngati Whare Iwi Management Plan 2011
Mahaanui Kurataiao Ltd (various Runanga)	mkt.admin@ngaitahu.iwi.nz	Mahaanui Iwi Management Plan 2013
Kāi Tahu ki Otago	Online enquiry form	Kāi Tahu ki Otago Natural Resource Management Plan 1995
Ngāi Tahu	info@waihopai.org.nz, orakaaparima@xtra.co.nz, hokonui@xtra.co.nz	Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008
Te Arawa River Iwi Trust	ngaroma@tarit.co.nz	Te Arawa River Iwi Trust Environmental Management Plan 2015
Ngāti Tūwharetoa	info@tuwharetoa.co.nz	Ngāti Tūwharetoa Iwi Environmental Management Plan 2003
Te iwi o Ngatiwai	ngatiwai@ngatiwai.iwi.nz	Ngātiwai Iwi Environmental Policy Document 2015
Patuharakeke	Juliane Chetham[4](admin@patuharakeke.Māori.nz)	Patuharakeke Te Iwi Trust Board Hapū Environmental Management Plan 2015

[4]Only these runanga replied to the survey.

Appendix B

Survey Questions

B.1 Council survey questions

Surveys were emailed to each local authority in New Zealand, however as some had s33 transfers in place, slightly modified surveys were emailed to them depending on the last known status of the transfers for that particular council.

Councils noted as having current s33 transfers, or have transferred through s33 in the past.

1. Could you please confirm if these transfers are still in place?

2. When the transfer lapsed?

3. Any reason/s for the lapse?

4. If any transfers have been made by the council through section 33 RMA since 2015?

5. Are any methods outside of Section 33 RMA used to transfer any duties or functions to authorities other than the council?

6. Has the council been approached by iwi for any transfers under section 33, and if these were never progressed what the reasons for this were?

Councils that do not have s33 transfers listed in any past research.

1. If any transfers have been made by the council through section 33 RMA since 2015?

2. Are any methods outside of Section 33 RMA used to transfer any duties or functions to authorities other than the council?

3. Has the council been approached by iwi for any transfers under section 33, and if these were never progressed what the reasons for this were?

B.2 Runanga survey questions

The survey questions below were sent to representatives of runanga who had s33 transfers mentioned in their Iwi Management Plans.

1. If there has been any progress in obtaining a transfer?

2. What the experience with trying to have a transfer of responsibilities was like?

3. If any other agreements are in place instead of a section 33 transfer?

Appendix C

Case law

Whakarewarewa Village Charitable Trust v Rotorua District Council 1994 - W61/94

Sea-Tow Ltd v Auckland Region 1993 - A129/ 93

Environmental Defence Society Inc v Northland Regional Council 2015 - NZEnvC 143

Appendix D

Deeds of settlement signed as at June 2017

Treaty settlements as provided by the Office of Treaty Settlements in June 2017[5].

Milestone	Date	Iwi
Deed of Settlement signed	14/06/1990	Waitomo
Deed of Settlement signed	23/09/1993	Ngāti Whakaue
Deed of Settlement signed	21/10/1993	Ngāti Rangiteaorere
Deed of Settlement signed	30/10/1993	Hauai
Deed of Settlement signed	22/05/1995	Waikato Tainui Raupatu
Deed of Settlement signed	20/12/1995	Waimakuku
Deed of Settlement signed	2/10/1996	Te Maunga
Deed of Settlement signed	6/10/1996	Rotoma
Deed of Settlement signed	21/11/1997	Ngāi Tahu
Deed of Settlement signed	26/09/1998	Turangitukua
Deed of Settlement signed	19/11/1999	Pouakani
Deed of Settlement signed	13/12/2000	Te Uri o Hau
Deed of Settlement signed	12/05/2001	Ngāti Ruanui
Deed of Settlement signed	20/12/2001	Ngāti Tama
Deed of Settlement signed	27/03/2003	Ngāti Awa
Deed of Settlement signed	6/06/2003	Ngāti Tūwharetoa (BOP)
Deed of Settlement signed	27/11/2003	Ngaa Rauru Kiitahi
Deed of Settlement signed	18/12/2004	Te Arawa Lakes
Deed of Settlement signed	31/07/2005	Ngāti Mūtunga
Deed of Settlement signed	17/12/2005	Te Roroa
Deed of Settlement signed	30/09/2006	Affiliate Te Arawa Iwi/Hapū
Deed of Settlement signed	11/06/2008	Affiliate Te Arawa Iwi/Hapū
Deed of Settlement signed	25/06/2008	Central North Island Collective
Deed of Settlement signed	19/08/2008	Taranaki Whanui (Wellington)
Deed of Settlement signed	22/08/2008	Waikato Tainui (River claim)
Deed of Settlement signed	8/10/2008	Ngāti Apa (North Island)
Deed of Settlement signed	31/07/2009	Whanganui On-Account
Deed of Settlement signed	8/12/2009	Ngāti Whare
Deed of Settlement signed	12/12/2009	Ngāti Manawa
Deed of Settlement signed	17/12/2009	Ngāti Raukawa (River)
Deed of Settlement signed	17/12/2009	Waikato Tainui (River claim)
Deed of Settlement signed	9/03/2010	Upper Waikato River Iwi
Deed of Settlement signed	31/05/2010	Ngāti Tūwharetoa (River interests)
Deed of Settlement signed	27/09/2010	Ngāti Maniapoto (Waipa River)
Deed of Settlement signed	23/10/2010	Ngāti Kuia (Kurahaupo)
Deed of Settlement signed	29/10/2010	Ngāti Apa ki te Ra To (Kurahaupō)
Deed of Settlement signed	4/12/2010	Rangitane o Wairau (Kurahaupō)

[5]Note: Settlements highlighted in yellow have yet to have their settlement legislation enacted.

Milestone	Date	Iwi
Deed of Settlement signed	17/12/2010	Ngāti Pāhauwera
Deed of Settlement signed	22/12/2010	Ngāti Porou
Deed of Settlement signed	5/03/2011	Ngāi Tamanuhiri
Deed of Settlement signed	12/03/2011	Maraeroa A and B Block Settlement
Deed of Settlement signed	2/04/2011	Ngāti Mākino
Deed of Settlement signed	21/05/2011	Ngāti Manuhiri
Deed of Settlement signed	9/09/2011	Ngāti Whātua o Kaipara
Deed of Settlement signed	20/09/2011	Waitaha
Deed of Settlement signed	30/09/2011	Rongowhakaata
Deed of Settlement signed	5/11/2011	Ngāti Whātua Ōrākei
Deed of Settlement signed	28/01/2012	Te Aupōuri
Deed of Settlement signed	2/06/2012	Ngāti Raukawa
Deed of Settlement signed	21/06/2012	Ngāti Ranginui
Deed of Settlement signed	8/09/2012	Tāmaki Collective
Deed of Settlement signed	27/10/2012	Ngāi Takoto
Deed of Settlement signed	28/10/2012	Te Rarawa
Deed of Settlement signed	7/12/2012	Ngāti Toa Rangātira
Deed of Settlement signed	16/12/2012	Ngāti Rangiwewehi
Deed of Settlement signed	16/12/2012	Tapuika
Deed of Settlement signed	20/12/2012	Ngāti Koroki Kahukura
Deed of Settlement signed	21/12/2012	Ngāti Koata
Deed of Settlement signed	21/12/2012	Te Atiawa o Te Waka-a-Maui
Deed of Settlement signed	7/04/2013	Ngāti Pūkenga
Deed of Settlement signed	13/04/2013	Ngāti Rarua
Deed of Settlement signed	20/04/2013	Ngāti Tama ki Te Tau Ihu
Deed of Settlement signed	25/05/2013	Maungaharuru Tangitū Hapū
Deed of Settlement signed	4/06/2013	Ngai Tūhoe
Deed of Settlement signed	14/06/2013	Ngāti Rangiteaorere
Deed of Settlement signed	18/07/2013	Ngāti Hauā
Deed of Settlement signed	14/12/2013	Ngāi Te Rangi
Deed of Settlement signed	7/02/2014	Ngāti Kuri
Deed of Settlement signed	22/02/2014	Te Kawerau ā Maki
Deed of Settlement signed	5/08/2014	Ngāruahine
Deed of Settlement signed	9/08/2014	Whanganui River
Deed of Settlement signed	9/08/2014	Te Atiawa (Taranaki)
Deed of Settlement signed	21/01/2015	Tauranga Moana Iwi Collective
Deed of Settlement signed	2/04/2015	Ngāti Hineuru
Deed of Settlement signed	5/09/2015	Taranaki Iwi
Deed of Settlement signed	26/09/2015	Ngāti Kahungunu ki Heretaunga Tamatea
Deed of Settlement signed	7/11/2015	Ngāi Tai ki Tāmaki
Deed of Settlement signed	14/11/2015	Rangitāne o Manawatū
Deed of Settlement signed	18/12/2015	Ngatikahu ki Whangaroa
Deed of Settlement signed	6/08/2016	Rangitāne o Wairarapa Tāmaki Nui-a-Rua
Deed of Settlement signed	2/11/2016	Ahuriri Hapū
Deed of Settlement signed	26/11/2016	Te Wairoa